



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking a Monetary Order for unpaid rent, unpaid utilities and the cost of replacing the lock at the rental unit; and to recover the filing fee from the Tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- (1) Is the Landlord entitled to a Monetary Order further to the provisions of Section 67 of the Residential Tenancy Act (the "Act")?

Background and Evidence

On May 27, 2010, the Tenant and the Landlord entered into a nine month lease agreement. The tenancy commenced July 1, 2010, and was to expire on March 31, 2011. The tenancy agreement provides that after the nine month term, the tenancy may continue on a month-to-month basis or for another fixed length of time. A copy of the tenancy agreement was provided in evidence.

The rental unit is the main house on the rental property. The Landlord lives in the coach house on the rental property.

Monthly rent was \$1,600.00, due on the first day of each month. Utilities were not included in the rent. The Tenants were responsible for 2/3 of the utilities and the Landlord was responsible for 1/3. The Tenants paid a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$200.00 on May 27, 2010. No condition inspections of the rental unit were performed at the beginning or the end of the tenancy that comply with the requirements of Sections 23 and 35 of the Act.

Landlord's testimony and evidence

The Landlord testified that the Tenants moved out of the rental unit, without giving written notice, on or about January 15, 2011, and without returning the keys. The Landlord testified that on December 15, 2010, the male Tenant casually told her that they would be moving by the end of January, 2011.

The Landlord testified that she immediately listed the rental unit for rent on a popular web site, and also listed it on another popular web site a few days later. At the beginning of January, 2011, she erected a "for rent" sign on the front yard.

The Landlord testified that the last time she spoke to the male Tenant was on January 21, 2011, when she called to give notice that she would be showing the house. The Landlord stated that he was very rude and accused her of not trying hard enough to re-rent the rental unit. The Landlord testified that their conversation ended with the male Tenant calling her a vulgar and profane name.

The Landlord testified that she found an envelope from the Tenants on February 1, 2011, containing \$600.00 towards February's rent and a note that stated the rental unit was clean and "You have \$1,000.00 of my money. Here is the balance for Feb. rent."

The Landlord stated that she attempted a number of different ways to re-rent the rental unit, including asking \$1,750.00 with utilities included. She testified that she finally re-rented it on June 1, 2011 for \$1,650.00, not including utilities.

The Landlord stated that the Tenants did not pay their share of the utilities, or rent for the remainder of the term of the tenancy. The Landlord seeks a monetary award, calculated as follows.

Tenants' share of water bill for Nov/10 – Jan/11 (\$143.66 x 2 / 3)	\$95.77
Tenants' share of hydro bill for Feb/Mar/11 (equal payments \$116.00 x 2 x 2/3)	\$154.66
Balance owing for Feb/11 rent	\$1,000.00
Balance owing for Mar/11 rent	\$1,600.00
Cost to rekey tumblers	<u>\$33.60</u>
TOTAL	\$2,884.03

Tenants' testimony

The Tenants do not dispute the Landlord's claim for water in the amount of \$95.77.

The Tenants dispute the amount the Landlord is seeking for hydro for the months of February and March because they were not living in the rental unit at the time.

The Tenants testified that they left the keys to the rental unit in the rental unit at the end of the tenancy and therefore they are disputing the Landlord's claim for rekeying the tumblers.

The Tenants stated that they gave the Landlord notice that they were moving in mid-December and that they do not believe she made all reasonable attempts to re-rent the rental unit. The Tenants stated that they looked on-line and could not find the rental unit advertised. They submitted that it was weeks before the Landlord put a sign in the yard.

The Tenants submitted that the rental unit was clean and undamaged at the end of the tenancy and so they agreed to let the Landlord keep the security and pet damage deposit and apply it towards February rent. The Tenants do not believe they should have to pay rent for March because the Landlord did not try hard enough to re-rent the rental unit.

The Tenants testified that they ended the tenancy early because their new home was ready and it made no sense to stay in the rental unit.

Analysis

The Tenants do not dispute the Landlord's claim in the amount of \$95.77 for their share of the water bill. This portion of the Landlord's application is granted.

The parties entered into a term lease on May 27, 2010, which is a legally binding contract.

Section 45(2) of the Act states:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) **is not earlier than the date specified in the tenancy agreement as the end of the tenancy**, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(emphasis added)

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy **must be in writing** and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.
(emphasis added)

I find that the Tenants did not end the tenancy in accordance with the provisions of the Sections 45 and 52 of the Act and that the Landlord suffered a loss due to the Tenants' breach of the Act.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case the Landlord bears the burden of proof.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
3. Establishment of the amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has established her claim for loss of revenue for the months of February and March. The Tenants argued that the Landlord did not try hard enough to re-rent the rental unit, however the Landlord advertised in two popular on-line sites and erected a sign at the rental property. The Landlord provided documentary evidence to substantiate this. I find that the Landlord took reasonable steps to mitigate her losses as a result of the Tenants' breach. The Landlord has established this portion of her claim in the amount of \$2,600.00.

The Tenants disputed the Landlord's claim for the cost of hydro for February and March because they didn't live in the rental unit. In a situation where tenants end a term lease prematurely and the tenancy agreement contains a provision that the tenants pay a portion of the utilities, the tenants can still be held liable to pay the costs of heating the

rental unit. The Landlord should not be expected to bear the costs of keeping the vacant rental unit at a reasonable temperature during the winter months. The Landlord provided documentary evidence supporting the amount claimed and I find that the Landlord has established this portion of her claim.

~~The Landlord did not provide a receipt for the cost of rekeying the tumblers and this portion of her claim is dismissed.~~

The Tenants disputed the Landlord's claim for the cost of rekeying the tumblers. They testified that the key had been left at the rental unit. The Landlord testified that she did not find the keys at the rental unit. It is the responsibility of a tenant to ensure return of keys at the end of the tenancy. The Landlord provided a copy of the receipt in the amount of \$33.60, and this portion of her claim is granted.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security deposit in partial satisfaction of her monetary award.

The Landlord has been largely successful in her application and is entitled to recover the cost of the filing fee from the Tenants.

The Landlord has established a monetary award, calculated as follows:

Cost of rekeying the locks	\$33.60
Tenants' share of water bill for Nov/10 – Jan/11 (\$143.66 x 2 / 3)	\$95.77
Tenants' share of hydro bill for Feb/Mar/11 (equal payments \$116.00 x 2 x 2/3)	\$154.66
Balance owing for Feb/11 rent	\$1,000.00
Balance owing for Mar/11 rent	\$1,600.00
Recovery of filing fee	\$50.00
Subtotal	<u>\$2,934.03</u>
Less security deposit	<u>-\$1,000.00</u>
BALANCE OWED TO THE LANDLORD	<u>\$1,934.03</u>

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of \$1,934.03 for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2011.

Residential Tenancy Branch

