



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNSD, MNDC, MNR, FF
For the tenants: MNDC, RPP, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution.

The landlord applied for a monetary order for unpaid rent and for money owed or compensation for damage or loss, an order to keep all or part of the security deposit, and to recover the filing fee for the Application.

The tenants applied for a monetary order for money owed or compensation for damage or loss, for recovery of their personal possessions and to recover the filing fee for the Application.

The landlord and the first listed tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond to the other's statements and evidence.

Although there was no clear testimony as to when each party served the other with their evidence and application, each party acknowledged receipt of the said evidence and application, including the landlord's amended application.

I note that the landlord repeatedly interrupted the telephone conference, despite warnings, which resulted in her being muted for a portion of the conference. However, the landlord was able to fully testify in support of her application.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for monetary relief?

Has the landlord breached the *Act* or tenancy agreement, entitling the tenants to an order for monetary relief, for an order requiring the landlord to return their personal property and to recover the filing fee?

Background and Evidence

Although a copy of a tenancy agreement was entered into evidence, the print was too small to be legible.

I heard testimony that this one year, fixed term tenancy started on February 14, 2011, monthly rent was \$900.00, payable on the first day of the month and that the tenants paid a security deposit of \$450.00 on February 12, 2011.

Landlord's Application:

The landlord's monetary claim is in the amount of \$2,700.00, which includes unpaid rent for June, July and August.

The landlord issued a 10 Day Notice for Unpaid Rent (the "Notice") to the tenants, but according to the landlord, the tenancy ended on August 2, 2011, when the tenants finally removed their belongings from the rental unit and there was no further need for an order of possession.

The landlord submitted that the tenants also owe utilities in the amount of 70% under the terms of the tenancy agreement, but has not listed a specific amount as being owed. Although the landlord submitted copies of the utility bills, the landlord did not submit any evidence that she paid the outstanding utility bills, testifying that she paid the bills with her line of credit.

The landlord submitted that the tenants also have not paid and owe rent for the month of September 2011, but has not claimed for this amount.

Although not claimed in the application, the landlord stated the tenants damaged the rental unit and would not attend a move out inspection.

Tenants' application:

The tenants' monetary claim is in the amount of \$2,000.00 in the event he was unable to retrieve his personal possessions, and requested an order for a return of his personal possessions.

The tenant submitted no evidence in support of his application.

In support of his application, the tenant testified that he has never lived in the rental unit, only his adult sons.

The tenant admitted rent for June was not paid, but this was due to the landlord changing the locks to the gate and not allowing him into the rental unit.

The tenant submitted that he gave the landlord a note in the first week of June of the tenants' intent to vacate, but supplied no copy of the note.

The tenant submitted that he has now removed his belongings, but his sons have not. The tenant did not deny the move-out date was August 2, 2011.

The tenant could provide no testimony as to what any of the alleged remaining possessions were.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

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.

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlord's application:

I accept the testimony and photographic evidence submitted by the landlord and find that the tenancy ended on August 2, 2011, when the tenants made a final move out of the rental unit.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenants remained in possession of the rental unit until August 2, 2011, that the tenants were obligated to pay rent under the tenancy agreement, but failed to pay rent

for June, July and August, having no rights under the Act to deduct any portion of the rent.

I therefore find that the landlord has established a **monetary claim** in the amount of **\$2,700.00** for unpaid rent for June, July and August, 2011 listed in her application.

As to the landlord's monetary claim for the utility bills, the landlord submitted a copy of some of the bills, but provided no evidence that she has paid the bills. I therefore find that the landlord has failed to meet step 3 of her burden of proof and I **dismiss** her unspecified claim for utility bills.

As the landlord was successful in large part with her application, I grant her recovery of the filing fee in the amount of \$50.00.

I find the landlord has established a total **monetary claim** in the amount of **\$2,750.00**, comprised of unpaid rent of \$2,700.00 and the filing fee of \$50.00. I order the landlord to retain the tenants' security deposit of \$450.00 in partial satisfaction of the monetary claim, and I grant the landlord a **monetary order** for the balance due in the amount of **\$2,300.00**.

I am enclosing a monetary order for **\$2,300.00** with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenants fail to comply with this monetary order.

Tenants' application:

The tenants submitted insufficient proof of any belongings left in the rental unit. Rather, the landlord's photographic evidence of the tenants' belongings in a moving van leads me to conclude that the tenants removed any of their possessions they wanted to retrieve.

As I have found that the tenants removed their personal property, I find they are not entitled to an order for a return of their personal property or for a monetary order for the value of the personal property.

I therefore **dismiss** the tenants' application, **without leave to reapply**.

As I have dismissed the tenants' application, I decline to award them the filing fee.

Conclusion

The landlord is granted a monetary order in the amount of **\$2,300.00**.

The tenants' application is dismissed, without leave to reapply.

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: September 13, 2011.

Residential Tenancy Branch