



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNDC, FF
Tenants: MNSD, MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties are seeking monetary orders.

The hearing was conducted via teleconference and was attended by the landlord and one of the tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

In addition it must be decided if the tenants are entitled to a monetary order for the return of rent paid and for all or part of the security deposit, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began in December 2010 as a month to month tenancy with a monthly rent of \$790.00 due on the 1st of each month and a security deposit of \$390.00 was paid.

The tenancy ended after a notice to end tenancy had been issued by the landlord for which he obtained an order of possession through Dispute Resolution with an effective date of May 31, 2011 and a Writ of Possession granted by the Supreme Court of British Columbia that was enforced through the use of a bailiff on June 3, 2011.

The tenant stated he did not attend the hearing on May 12, 2011 that issued that order despite being named by the Dispute Resolution Officer as in attendance. The tenant also stated that he had asked the landlord to let him stay for one more month and that the landlord had verbally agreed to this. The landlord denies having any such conversation.

The tenant seeks the return of rent for the month of June 2011. The tenant stated that his rent was paid directly to the landlord a week or two prior to June 1, 2011. The tenant also seeks return of the security deposit stating that there was no damage to the rental unit.

The landlord did not submit a copy of a move in or move out Condition Inspection Report. The landlord submitted 3 photographs of carpets that have been removed from the subfloor and receipts for light fixtures, garbage removal, carpet replacement; a smoke alarm; locks; and charges related to the bailiff services.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In relation to the landlord's Application for compensation for damage to the rental unit I find, as the tenant dispute the landlord's testimony of the condition of the rental unit and in the absence of any documentary evidence of the condition of the rental unit at the start of the tenancy and at the end of the tenancy, the landlord has failed to establish that any damage was caused during this tenancy and I dismiss this portion of the landlord's Application, without leave to reapply.

As the tenants failed to vacate the rental unit by May 31, 2011 as directed by the previous order granted to the landlord, I find the landlord suffered a loss resulting from the tenant's violation of that order (the *Act*). I also find the landlord has established the value of that loss to be \$982.58, as per the invoice submitted into evidence.

As to the tenant's Application to return of rent for the month of June, I find that as the tenant's did not comply with order of possession requiring them to vacate the rental unit by May 31, 2011, the tenants became responsible for the payment of rent, even it was for use and occupancy only, on June 1, 2011 and as such, I dismiss their application for its return, without leave to reapply.

And despite the tenant's claim that they caused no damage to the rental unit, as I have found above that the landlord is entitled to recover the bailiff costs for removing the tenants and that that amount exceeds the value of the security deposit, I find the tenants are not entitled to the return of their security deposit and I dismiss this portion of their application, without leave to reapply.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,032.58** comprised of \$982.58 bailiff charges and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$390.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$642.58**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 05, 2011.

Residential Tenancy Branch