



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This matter dealt with an application by the Landlords for unpaid rent, for compensation for cleaning expenses and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlords confirmed that there was another party (ie. their son, R.S.) who was also a tenant during this tenancy. The Landlords said they did not name R.S. in these proceedings because they mistakenly believed that only the person who paid the rent should be named as a party. In any event, the Landlords said R.S. is aware of these proceedings and he is also aware that he could be liable as a joint tenant for any monetary order issued in these proceedings.

Issue(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income and if so, how much?
3. Are the Landlords entitled to compensation for cleaning expenses and if so, how much?

Background and Evidence

This tenancy started approximately 10 years ago. The Tenant is the former daughter-in-law of the Landlords. The Tenant resided in the rental unit with her former spouse (R.S., who is the Landlords' son) and their 3 children until approximately July 31, 2011. Rent was \$835.00 per month payable in advance on the 1st day of each month. There is no written tenancy agreement.

The Landlords said the Tenant and their son advised them in August or September 2010 that they were having financial difficulties. Consequently, the Landlords said they agreed to reduce the rent to \$600.00 per month until the Tenant and their son got caught up on their bills and at that time they would pay the balance of \$235.00 for each month they paid a reduced rent. The Landlords said they advised the Tenant and their son in May or June of 2011 that they would have to start paying the full amount of rent as of June. The Landlords also claimed that the Tenant and their son paid rent for December 2010 in mid-January 2011 and that this resulted in their being one month behind in the rent from that point forward. The Landlords said the Tenant made a full

rent payment in July 2011 which was applied to rent for June 2011. Consequently, the Landlords claim that rent is unpaid for July 2011. In support of their position, the Landlords provided a written statement from their son (R.S.) dated October 1, 2011 in which he alleges that he and the Tenant agreed to pay the \$235.00 shortfall and that December 2010 rent was paid in January 2011 putting them one month behind in their rent. The Landlords also provided copies of bank statements that they claim represent the following rent payments made by the Tenant and her spouse, R.S.:

April 26, 2010:	\$800.00
May 28, 2010:	\$850.00
August 3, 2010:	\$760.00
September 7, 2010:	\$600.00
October 8, 2010:	\$600.00
November 15, 2010:	\$400.00
December 2010:	\$0.00
January 21, 2011:	\$540.00
February 28, 2011:	\$1,000.00
March 21, 2011:	\$600.00
April 25, 2011:	\$580.00
May 2011:	\$0.00
June 6, 2011:	\$600.00
July 4, 2011:	\$800.00

The Landlords said they also issued receipts for rent payments and kept copies for income tax purposes, however they did not provide those receipts or any other documents as evidence at the hearing.

The Landlords said that around the same time as the Tenant and her 3 children moved out (at the end of July 2011), their son also took a few belongings and moved out. However the Landlords then claimed that their son was hospitalized for 2 weeks at the beginning of August 2011 and stayed with various family members for approximately 4 days after that. The Landlords said that on or about August 18, 2011 their son moved back into the rental property but only occupied the downstairs suite. The Landlords said their son did not pay any rent for August 2011 and currently pays \$400.00 per month for the basement suite. The Landlords said they rented the upper suite to other tenants as of September 2011. The Landlords claimed they were unable to re-rent the upper suite for August 2011 because the Tenant left a number of belongings behind in the rental unit and did not leave it reasonably clean. Consequently, the Landlords also sought \$835.00 for a loss of rental income for August 2011.

The Landlords did not complete a move out condition inspection report but instead provided photographs of the rental unit they said they took on or about August 2, 2011. The Landlords said they incurred expenses of \$62.76 for cleaning supplies and \$150.00 for labour expenses to clean the rental unit at the end of the tenancy.

The Tenant claimed that if there was an agreement to re-pay the Landlords \$235.00 for each month the rent was reduced that agreement was between the Landlords and their son. The Tenant denied that there was an agreement to pay the Landlords \$235.00 for each month that the rent was reduced. The Tenant claimed that in August or September 2010, she proposed that she and her family occupy only the upstairs of the rental property and that the Landlords rent out the basement suite but that the Landlords did not think there would be enough room for their grandchildren and just agreed to a rent reduction. The Tenant also denied that there were rent arrears for July 2011 or that rent was one month behind.

Counsel for the Tenant argued that the Landlords application in this matter was the result of a family dispute and motivated by the break-up of their son's marriage to the Tenant and ongoing child access issues. Counsel for the Tenant also argued that the Landlords were not seeking unpaid rent for "business reasons" as they claimed because by their conduct they did not treat the tenancy as a business. In particular, counsel noted that the Landlords did not execute a tenancy agreement and did not keep business records. Counsel also noted that it would not be a prudent business practice to re-establish a tenancy with a tenant (ie. their son) who could not afford to pay the rent. Consequently, counsel argued that the Landlords agreed to reduce the rent for family reasons and there was no evidence of an agreement to pay the rental rate difference at a later date.

Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that there are rent arrears, that due to the actions of the Tenant they lost rental income for August 2010 and that they reasonably incurred cleaning expenses. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Unpaid Rent:

I find it unlikely that the Tenant was not involved in decisions regarding finances such as the rent given that she was the sole income earner of the family. Consequently, I find that the Tenant was privy to an agreement with the Landlords in August or September 2010 that the rent would be reduced to \$600.00 per month until the Tenant and her spouse could catch up on their bills. However, I find that there is insufficient evidence of an agreement that the Tenant would be responsible for paying the shortfall of \$235.00 for each month that the rent was reduced.

Although the Landlords' son gave a written statement corroborating the Landlords' evidence, I give it little weight because he did not attend the hearing to be cross-examined on that statement and therefore the reliability of that statement is

questionable at best. Essentially, it is a matter of the Landlords' word against the Tenant's and for that reason, I find that the Landlords have not provided sufficient evidence to show on a balance of probabilities that there was a verbal agreement that the Tenant would pay \$235.00 per month for a 9 month period during which rent was reduced.

I also find that the evidence of the Landlords is not sufficient to show on a balance of probabilities that the Tenant was behind one month in rent with the result that rent for July 2011 was unpaid. The Landlords relied on bank statements for the period, April 2010 to July 2011, as evidence of the Tenant's indebtedness however I find that these records are unreliable because the months of June and July 2010 have been omitted. Furthermore, the Landlords admitted to having receipts and income tax records that would show payments that were made however, they provided none of these as evidence at the hearing. As a result, this part of the Landlords' application for unpaid rent is dismissed without leave to reapply.

Loss of Rental Income:

The Landlords claimed that the Tenant moved out without notice at the end of July 2011, left a number of possessions behind and did not leave the rental unit reasonably clean. The Landlords admitted that their son moved back into the basement suite of the rental property on or about August 18, 2011 but claim he did not pay any rent for that month. The Landlords also claimed that the upstairs suite could not be re-rent for August 2011 because the Tenant's possessions had to be removed and the suite cleaned.

Under section 45 of the Act, a Tenant of a month-to-month tenancy must give a Landlord one full, calendar month's notice in writing that they are ending the tenancy. Consequently, the earliest the Tenant could have ended the tenancy on July 31, 2011 would have been August 31, 2011. However, section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Landlords claimed that they entered into a new tenancy agreement with their son to rent the basement suite at \$400.00 per month. Although the Landlords said they did not charge their son rent for this month (or part month), I find that they entered into a new tenancy agreement in August 2011 and cannot now seek to recover rent for the basement suite from the Tenant. I also find, with the exception of one photograph of a kitchen cupboard, the Landlords provided no evidence of the condition of the upstairs suite at the end of the tenancy. Furthermore, the Landlords admitted that as of September 1, 2011 they had returned the rental property to two separate rental suites and I find that this likely contributed to any delay in renting the upstairs suite. For all of these reasons, I find that there is insufficient evidence that the Tenant was responsible

for the Landlords incurring the rental income losses for August 2011 and that part of their claim is dismissed without leave to reapply.

Cleaning Expenses:

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. The Landlords provided photographs of the rental unit they say were taken on August 2, 2011 after the Tenant vacated which the Tenant did not dispute. Consequently, I find that the photographs accurately represent the condition of the rental unit at the end of the tenancy.

However, the Landlord did not provide any evidence in support of the amount claimed for labour but instead wrote on their claim for “wages \$150.00.” Given that most of the cleaning would have been confined to the lower suite (based on the Landlords’ photographs), I find that the amount claimed for wages is reasonable and award the Landlords that amount. The Landlords also provided an itemized receipt for cleaning supplies however there is no date on that receipt and therefore I am unable to conclude that these items were purchased at the end of the tenancy for the purpose alleged. Consequently, I award the Landlords a total of \$150.00 for cleaning expenses.

Filing Fee:

As the Landlords have been successful on very few of their claims in this matter, I find that it is not an appropriate case to order that the Landlords recover the \$50.00 filing fee for the proceeding from the Tenant and that part of their application is dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of **\$150.00** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: October 31, 2011.

Residential Tenancy Branch