



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was an application by the landlords for a monetary order and an order to retain the tenant's security deposit. Initially the application included a request for an order for possession, but it was later amended after the tenant vacated the rental unit to increase the monetary amount claimed. The landlords' attended with their lawyer and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental property is located in Chilliwack. The tenancy began on November 15, 2010 for a one year term with rent in the amount of \$1,250.00 payable in advance on the 15th day of each month. The tenants paid a security deposit of \$625.00 before the tenancy commenced.

On September 16, 2011 the landlords served the tenants with a 10 day Notice to End Tenancy for unpaid rent by posting it to the door of the rental unit. The notice claimed that the tenants failed to pay rent in the amount of \$1,250.00 that was due on September 15th.

The landlords testified that they drove past the house on October 2, 2011 and observed that the door and windows were open and the tenants had abandoned the rental unit, leaving significant cleaning and garbage removal to be done. The landlord claimed the following:

- | | |
|--|------------|
| • Rent from September 15 th to Oct 15 th | \$1,250.00 |
| • Per diem rent to October 31 st | \$666.72 |

• Legal fees	\$1,170.92
• Repair material and light replacement	\$76.70
• Cleaning supplies	\$30.27
• Cleaning supplies	\$158.85
• Cleaning a supplies and cabinet liners	\$79.76
• Locksmith charge	\$21.90
• Rubbish removal	\$168.00
• Carpet cleaning	\$228.48

The tenant testified that she was away from the rental unit when the Notice to End Tenancy was posted on the door. She said that she arranged with the landlord that the rent would be paid on the 20th of the month, not on the 15th and when she arrived home to find the Notice to End Tenancy, the five day period for paying the rent had already passed so the tenants moved out within the ten day period provided by the Notice. She testified that she left the keys to the rental unit inside on the mantle and notified the landlords of that fact through their lawyer. She said that it was not the tenants' fault that the unit was not properly cleaned because in order to comply with the Notice to End Tenancy and move they did not have time to clean. The tenant also alleged that the landlords had been seeking since July to have them move out so they could occupy the rental unit.

The tenant also said that a broken light fixture was not the tenants' responsibility because it was improperly installed fan light and broke the first time the light was turned on.

Analysis

The tenancy agreement provides that rent was due on the 15th of each month. The tenant claimed that the terms were altered by a verbal agreement between the parties.

The following quote is a statement of the "parole evidence rule", a principle of evidence with specific application to the interpretation of written contracts.

It has long been a substantive rule of law in the English speaking world that in the absence of fraud or mutual mistake, oral statements are not admissible to modify, vary, explain or contradict the plain terms of a valid written contract between two parties.

It should be noted that there is a very sound basis for the rule for to consider any or every oral statement made by one party or the other during contract

negotiations so as to vary, modify, or contradict the plain language finally adopted could throw the best written contract into doubt, and constant turmoil. Where a contract is clear and unambiguous, oral statements or reservations made by either party do not change it.

If terms of the contract are ambiguous or clearly susceptible to more than one meaning then parole evidence is admissible to show what the parties meant at the time of making the contract and how they intended it to apply.

In the present case there is no ambiguity in the written tenancy agreement; it is signed by both parties and it states unequivocally that rent is due on the 15th of each month. It is also a term that the tenant must pay the rent on time. In these circumstances, although the conduct of the parties with respect to payment of rent is said to be ambiguous, the contract is not. I therefore find that the rent due under the tenancy agreement was due on the 15th of September and the landlord was entitled to serve a 10 day Notice to End Tenancy for non-payment of rent by posting it on September 16th.

The tenant did not pay rent for September 15th to October 15th. I allow the claim for unpaid rent in the amount of \$1,250.00. I accept the landlord's testimony that the rental unit could not be prepared for re-renting before November 1, 2011. I award \$625.00 for loss of revenue for the second half of October.

I deny the claim for reimbursement of legal fees. The only costs recoverable on an application for dispute resolution are the filing fees paid by the applicant.

The evidence submitted by the landlord shows that the tenants left the rental unit unclean and left rubbish, castoffs and debris behind. I find that the landlords are entitled to be compensated for cleaning the rental unit.

I deduct \$16.00 from the landlord's claim for supplies based on the tenant's testimony that the broken fan light was not the fault of the tenant. As to the claims for reimbursement of cleaning supplies, I consider them to be legitimate and I note that the landlords have not charged for their time spent cleaning. I allow the claims for rubbish removal and carpet cleaning. With respect to the locks, I allow the landlord's claim for locksmith charges; the tenant claimed that she advised the landlords that she left the keys in the rental unit, but she could not say who she spoke to at the lawyer's office or when the conversation took place. I find that the landlords were justified in changing the locks.

The total amount awarded to the landlords is the sum of \$2,722.96. The landlords are entitled to recover the \$50.00 filing fee for this application for a total award of \$2,772.96. I order that the landlords retain the security deposit of \$625.00 in partial satisfaction of the award and I grant the landlords a monetary order under section 67 for the balance of \$2,147.96. This order may be registered in the Small Claims Court 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 26, 2011.

Residential Tenancy Branch