



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 hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for damage to the rental unit, unpaid rent, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenants served the landlord with 31 pages of evidence, sent by registered mail on October 12, 2011, to the service address contained in the landlord's application. The mail was returned to the tenants as unclaimed. The landlord's agent testified that the landlord resides in Mexico.

li explained that the landlord's service address is included as part of the application in order to allow the respondents to make evidence submissions or submit their own application. The Act deems registered mail served on the 5th day after mailing and in this case there is no reason why the landlord's agent could not have ensured that the mail was accepted. A failure to claim registered mail does not avoid service; therefore, I found that the tenant's evidence would be considered during the hearing as it is deemed served on October 17, 2011. The evidence was referenced during the hearing; much of it included reviews of emails sent between the tenants and landlord.

Issue(s) to be Decided

- Is the landlord entitled to a monetary Order for damage to the unit in the sum of \$295.00?
- Is the landlord entitled to unpaid rent in the sum of \$1,100.00?
- Is the landlord entitled to loss of rent revenue in the sum of \$1,100.00?
- Is the landlord entitled to retain the deposit paid by the tenants?
- Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord has claimed the following:

July 2011 rent	1,100.00
Garbage removal estimate	95.00
Technician report	200.00
	2,495.00

The landlord did not make any evidence submissions prior to this hearing.

The landlord's agent could not provide any testimony in relation to the start of the tenancy or amount of deposit paid. Initially the landlord did not dispute that a deposit had been paid; later in the hearing the agent suggested that a deposit had not been paid. The landlord's agent stated she applied to retain the deposit as this is what she was told to do when she submitted her application.

The landlord alleged that the tenants removed the only copy of the tenancy agreement from one of the units in the home. The tenants submitted that there was never a tenancy agreement signed when they moved into the upper unit.

The tenant's agent stated that the tenancy commenced in May, 2011. The home contains 3 units; the tenants moved from one unit to another; creating a new tenancy. At that time the tenants moved from one unit in the home, to the 2nd unit the tenants paid a \$500.00 deposit, even though the landlord was already holding a deposit in the same sum from the initial tenancy.

The tenants submitted an email sent by the landlord on April 16, 2011, indicating she would accept a \$500.00 deposit and rent would be left at \$1,000.00 per month.

The tenants supplied a copy of a May 1, 2011, cheque to the landlord in the sum of \$1,000.00 for rent paid; the back of the processed cheque as also provided.

On June 26, 2011 at 10:32 p.m. the tenants emailed the landlord and gave notice they would vacate around July 15, 2011. The landlord responded on June 27, 2011, at 9:35 a.m. requesting written confirmation. The tenants then sent a signed note, after scanning the document, to the landlord on June 29, 2011. Evidence showed that the unit was being showed to prospective occupants prior to the end of June.

The tenants confirmed that they did not pay July, 2011, rent as they asked the landlord to retain the \$500.00 paid as a deposit from their initial tenancy, plus the \$500.00 paid for the tenancy under dispute. The tenants submitted that rent was not \$1,100.00 per month, but \$1,000.00 per month, as indicated in the landlord's email sent on April 16, 2011.

The landlord submitted the tenants damaged a washing machine and left garbage behind that had to be hauled away.

The landlord submitted the claim against the tenants on August 2, 2011, using the tenant's forwarding address. The parties were each vague in relation to the end date of the tenancy; it appears that the tenants vacated sometime in mid-July; they submit they were never given keys to the unit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any evidence verifying garbage removal costs or washing machine repair; I dismiss that portion of the landlord's claim.

I find that no later than June 27, 2011, the landlord received written notice that the tenancy was ending. It is clear that email was a commonly used method of communication between the parties; I find no other written notice was needed.

Based on the testimony of the parties and the evidence before me, I find that the tenant's submission was most reliable. The landlord's agent did not know the most basic facts of the tenancy, such as the start date; leading me to have more confidence in the tenant's submission. Therefore, based on the evidence before me, on the balance of probabilities, I find that a deposit in the sum of \$500.00 was paid by the tenants.

I find that rent owed was \$1,000.00 per month, as indicated in the landlord's April 16, 2011, email.

The tenants can only apply a deposit to unpaid rent if the landlord gives written consent to do so. A deposit from a previous tenancy could not have been applied to rent owed in the tenancy under dispute, unless there was evidence before me that the landlord had consented; there was no evidence of this before me. Therefore, I find that the landlord is entitled to compensation for July, 2011, rent in the sum of \$1,000.00

The landlord may retain the \$500.00 deposit in partial satisfaction of the claim. A monetary order for the balance has been issued to the landlord.

There was no evidence before me that this was anything but a month-to-month tenancy; therefore, as the tenant's gave proper notice ending the tenancy I dismiss the claim for loss of August, 2011, rent revenue.

I find that the landlord's application has merit, and I find that the landlord entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I explained that any dispute in relation to a deposit paid for a previous, separate tenancy, is a matter that could not be determined during this hearing.

Conclusion

I find that the landlord established a monetary claim, in the amount of \$1,050.00, which is comprised of July, 2011, rent and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will retain the deposit paid in the sum of \$500.00, in partial satisfaction of the claim.

Based on these determinations I grant the landlord a monetary Order for the balance of July, 2011, rent and the filing fee in the sum of \$550.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim is dismissed.

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: November 04, 2011.

Residential Tenancy Branch