



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNR, MNRD, MNSD, FF
Tenants: MNDC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought a monetary order and an order of possession and the tenants sought a monetary order; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and an order to have the landlord make repairs.

The hearing was conducted via teleconference and was attended by two agents for the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for damage to the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to an order to have the landlord comply with the *Act*; to an order to have the landlord make repairs to the rental unit; and to a monetary order for cleaning the rental unit at the start of the tenancy, pursuant to Sections 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on November 1, 2011 for a 1 year fixed term tenancy agreement for a monthly rent of \$825.00 due on the 1st of each month with a security deposit of \$412.50 paid.

The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued to the tenants on December 2, 2011 for unpaid rent in the amount of \$825.00 due on the 1st of December, with an effective vacancy date of December 12, 2011.

Both parties agreed in the hearing the tenants had not paid rent for the months of December 2011 and January 2012. The parties also agree the police have advised both of them to have no contact with each other.

The tenants testified that on December 6, 2011 they contacted the police to ask the police to contact the landlord telling the landlord the tenants had rent available for the landlord. The landlords testified that they did not contact the tenants as they were told not to by the police but that the tenants could have dropped to rent off at the office in the building.

The tenants assert they did not know where to pay the rent as the landlords were refusing any contact with the tenants. The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

The landlord also seeks damage for repair to the wall in the stair well in the residential property. The landlord asserts the tenants are responsible for a bike being thrown down the stairs and caused damage to the walls, completion of repairs is forthcoming and the landlords anticipate a cost of between \$300.00 and \$500.00.

The tenants testified that they had not caused any damage to the walls. The female tenant testified that they had had a fight but that the male tenant left the building with his bike by taking it down the stairs and that they did not cause any damage that wasn't already there.

The tenants seek compensation for cleaning the rental unit at the start of the tenancy. The female tenant testified that she had to hire people who cleaned the rental unit for 3 to 3 ½ hours after they moved in. The tenant testified she had photographs of the condition on her phone but she did not provide any into evidence.

The landlords state they completed a move in condition inspection with the tenants and there was no mention of any cleaning that was required. The landlord testified that the tenants had moved in early and when doing the inspection the landlord agreed to a reduced rent for the period before November 1, 2011 in compensation for cleaning.

Analysis

I have reviewed all documentary evidence and testimony and accept that the tenants have been served with notice to end tenancy as declared by the landlord. Section 46 of the *Act* states that within 5 days of receiving such a notice a tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*. While I accept the parties had, at the request of police, been not able to contact each other, however, the obligation to ensure the rent is paid to the landlord is the tenants', not the landlords.

Therefore, by simply having the police call the landlord to state the tenants have rent is insufficient, the tenants are responsible for getting the landlord the rent. The tenancy

agreement submitted contains the landlord's address for service, as does the 10 Day Notice. The tenants provided no testimony as to what prevented them from mailing the mail to the landlord.

Even if I were to accept the tenants testimony as a legitimate reason as to why they had not paid rent, the *Act* prescribes the only alternative to not paying the rent when a 10 Day Notice is issued is to file an Application for Dispute Resolution with the Residential Tenancy Branch. To date the tenants have not filed an Application to dispute the Notice.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I also find the landlord is entitled to rent for the months of December 2011 and January 2012.

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.

As to the landlord's claim for \$500.00 for repair to damages in the stairwell, I find the landlord has provided no evidence that damage exists. In addition, as the tenants dispute they caused any damage and in the absence of any documentary or testimonial evidence from witnesses, I find the landlord has failed to establish any violation of the *Act*, regulation or tenancy agreement. For these reasons, I dismiss this portion of the landlord's Application, without leave to reapply.

As to the tenant's claim for \$75.00 for cleaning at the start of the tenancy, I find the tenants have provided no evidence that rental unit required cleaning or that they incurred any costs as a result. In addition, as the landlord disputes the condition of the unit at the start of the tenancy and in the absence of any documentary or testimonial evidence from witnesses, I find the tenants have failed to establish any violation of the *Act*, regulation or tenancy agreement. For these reasons, I dismiss this portion of the tenant's Application, without leave to reapply.

In regard to the remainder of the tenants' Application seeking an order to have the landlord comply with the *Act*, regulation or tenancy agreement and to have the landlord make repairs, as I have found the tenancy is ending, I find no need to make any such orders, and I dismiss this portion of the tenant's Application.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,700.00** comprised of \$1,650.00 rent owed 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 \$412.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,287.50**. 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: January 03, 2012.

Residential Tenancy Branch