



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MND, MNSD; FF

Introduction

The Landlords filed their first application for unpaid rent on August 4, 2011. The Hearing took place on September 6, 2011 and the Landlords' application was dismissed with leave to reapply.

The Landlords reapplied on September 7, 2011. The Hearing took place on December 12, 2011 and the Landlords' application was dismissed with leave to reapply because no one signed into the teleconference. The Landlords filed an Application for Review Consideration on the grounds that they were unable to attend the Hearing for reasons beyond their control. The Landlords' Application for Review was granted and a new Hearing was scheduled for January 26, 2012.

This is the Landlords' application for a Monetary Order for unpaid rent and damage to the rental unit; to retain the security deposit and pet damage deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

Both parties signed into the teleconference and gave affirmed testimony.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order against the Tenants for unpaid rent in the amount of \$1,900.00 and damages to the rental unit in the amount of \$100.00, pursuant to the provisions of Section 67 of the Act?

Background and Evidence

This tenancy began on April 1, 2010 and ended on July 1, 2011. Monthly rent was \$1,880.00 due on the first day of each month. The Tenants paid a security deposit in the amount of \$940.00 and a pet damage deposit in the amount of \$360.00 on March 8, 2010.

The Landlords gave the following testimony:

The Landlords testified that the Tenants owe \$880.00 in rent for the month of May, 2011. In addition, they testified that the Tenant's June rent cheque was returned "payment stopped". The Landlords stated that the Tenants paid \$500.00 towards

June's rent on June 17, 2011, and \$360.00 on July 1, 2011, but still owe \$1,020.00. Therefore, the total rent owing for May and June, 2011 is **\$1,900.00**.

The Landlords testified that the Tenants were supposed to move out on June 30, 2011, but did not move out until July 1, 2011. The Landlords testified that the new occupants moved in on the same day. The Landlords testified that the Tenants' TV damaged a wall, which the Tenants did not repair. The Landlords provided a receipt in the amount of **\$100.00** for the cost of repairing the wall and seek to recover the cost from the Tenants.

The Tenants gave the following testimony:

The Tenant agreed that they owed rent for May in the amount of \$880.00. The Tenants calculate that they don't owe the Landlords any money because they told the Landlords that they could keep the security and pet damage deposits and use it towards unpaid rent. They also submitted that they did \$600.00 worth of repairs (materials and labour) at the rental unit.

The Tenants stated that the Landlord had agreed that they could move out on July 1, 2011. The Tenants acknowledged that there was some damage to the wall from where their TV was mounted, but stated that the damage was minimal and that the Tenant could have fixed it for about \$5.00. The Tenants stated that they were not given the time to make the repairs.

The Landlords gave the following reply:

The Landlords stated that they had agreed that the Tenants could move out by the end of the morning on July 1, 2011, but submitted that tenants are supposed to have everything repaired before they moved out. The Landlords stated that they tried to call the Tenants several times over the course of a couple of weeks in order to find out when they would be fixing the wall, but the Tenants would not return their calls so they had to hire a handyman to do it.

Analysis

Section 26 of the Act requires that tenants must pay rent when it is due unless they have a right under the Act to deduct an amount from the rent. The Act allows limited reasons for a tenant to do so (for example, if they have an order of the director that they may do so, or pursuant to the provisions of Section 33 of the Act if they make emergency repairs). In this case, I find that the Tenants had no authority under the Act not to pay rent when it was due.

Therefore, based on the testimony of both parties, I find that the Landlords have established a monetary award for unpaid rent, calculated as follows:

Unpaid rent for May, 2011	\$880.00
Unpaid rent for June, 2011	\$1,020.00
TOTAL unpaid rent	\$1,900.00

Section 37 of the Act requires tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. The tenancy ended on June 30, 2011, and the Landlords agreed to allow the tenants until noon on July 1, 2011, to finish moving out. I find that The Tenants did not repair the damage to the walls caused by the TV mounts by the end of the tenancy.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, I may determine the amount of, and order the other party to pay, compensation to the other party. I find that the Tenants did not comply with Section 37 of the Act and that the Landlords suffered a loss as a result. I find that the amount of \$100.00 for repairing the damage is not unreasonable, and award the Landlords this portion of their claim in the amount of **\$100.00**.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit and pet damage deposit towards partial satisfaction of their monetary claim. No interest has accrued on the security deposit.

The Landlords have been successful in their application and are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I provide the Landlords a Monetary Order against the Tenants, calculated as follows:

Unpaid rent and loss of rent	\$1,900.00
Cost to repair damage to wall	\$100.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,050.00
Less security deposit and pet damage deposit	<u>- \$1,300.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$750.00

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$750.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: February 02, 2012.

Residential Tenancy Branch