



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This Hearing is a Review Hearing for the Landlord's application dated December 15, 2011, which was originally heard on February 27, 2012. At the original hearing a decision and an order were issued February 27, 2012 to the Landlords. The monetary order was for the amount of \$2,754.35 and the Landlords were ordered to retain the Tenants' security deposit of \$700.00. The Tenants applied for a review on April 10, 2012 because they did not receive the Landlords' application and therefore did not know the hearing was taking place. The Tenants were successful in their application for a review consideration. The review application decision stated the Tenants were not served with the Landlords' Application and Hearing package and a review hearing was granted.

This matter deals with an application by the Landlords for monetary compensation for unpaid rent, for compensation for loss or damage under the Act, regulations, or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Tenant said she served the Landlords with the Review Application and Notice of Hearing (the "hearing package") by personal delivery on April 25, 2012. Based on the evidence of the Tenants and the Landlords, I find that the Landlords were served with the Tenants' review hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Is their damage or loss to the Landlord and if so how much?
4. Are the Landlords entitled to compensation for the damage or loss and if so how much?
5. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on March 15, 2011 as a month to month tenancy. The Landlords' Agent said the Tenants moved out of the rental unit without giving the Landlords proper notice. The Landlords' Agent continued to say the Tenants moved out of the rental unit in late September or early October without any notice written or verbal. The Landlords' Agent said that the Tenants taped a note to the Landlords' door on October 3, 2012, saying they had moved out and why they had moved out. The Landlords' Agent continued to say that the Tenants did not clean the unit when they left and the Landlords were unable to rent the unit until December 1, 2011, because they believed the Tenants had a claim on the rental unit until December 1, 2011. The Landlords' Agent said they believed this because the Tenants gave them written Notice to end the tenancy on October 3, 2011 which means the correct effective vacancy date would be December 1, 2011. As a result the Landlords' Agent said they are claiming unpaid rent for October, 2011 of \$1,400.00 and unpaid rent for November, 2011 of \$1,400.00.

The Landlords Agent continued to say that the Tenants left the rental unit in an unclean state and they are claiming \$368.80 for cleaning charges, \$174.72 for carpet cleaning and \$31.36 for garbage disposal. The Landlords' Agent said receipts for these expenses are included in their evidence package. As well the Landlords agent said they are claiming \$7.00 for Bank charges, \$22.47 for replacement locks and key cutting for the garage door locks as the Tenants did not return the garage door keys. The Landlords Agent said their total claim is for \$3,404.35 and to retain the Tenants security deposit of \$700.00.

The Tenants said they are not disputing the Landlords keeping their security deposit of \$700.00 as they did not clean the unit well when they moved out. The Tenants continued to say they are disputing the unpaid rent the Landlords are claiming as the Tenants said they gave the Landlords written notice to end the tenancy on August 28, 2011. The Tenant said she personally delivered the letter to end the tenancy to the Landlords' Agent on August 28, 2011 at approximately 6:30 p.m. The Tenant provided a copy of the letter to end the tenancy in the Tenants' evidence package and the Tenant called a Witness to testify that he saw the Tenant personally deliver the letter to end the tenancy to the Landlords' Agent.

The Witness said he saw his mother deliver a letter to the Landlord. On questioning the Witness, he first said he could not describe the Landlord because it was night and dark out and then the Witness was able to describe the Landlord in general terms. It was confirmed with the Witness that it was August 28, 2012 at 6:30 p.m. when he saw the Tenant give the Landlord the letter. The Witness was confused whether it was dark out or not. The Tenant said this happened at 6:30 p.m. in August so it was not dark out.

The Tenant said the Witness can have trouble remembering things because he suffers from autisms. The Landlords' Agent said this meeting never happened and she has never seen the Tenant's son. As well the Landlords' Agent said she was at work that day until 4:30 p.m. on that day and then she went out with friends so she was not at home at 6:30 p.m. August 28, 2012. The Landlords' agent provided a copy of her work time sheet as evidence that she was at work on August 28, 2012 until 4:30 p.m., but she could not confirm what time she arrived home. The Landlords' Agent said the Tenants are not telling the truth because if she had received written notice to end the tenancy on August 28, 2012 she would have not made this application and she would have rented the unit before December 1, 2011.

Analysis

As the Tenants said they did not contest the cleaning charges and that they agreed with the Landlords keeping their full security deposit of \$700.00, I find for the Landlords and grant the Landlords the cleaning claims of \$574.88 as well as the Landlords' claims of \$29.47 for the bank charges and the replacement of the garage door locks.

With respect to the unpaid rent for October and November, 2011 in the amount of \$2,800.00 there was much contradictory testimony and evidence. The Tenants and the Tenants' witness (her son) said they did give the Landlords the letter on August 28, 2011 ending the tenancy on October 1, 2011. I found that the Witness's testimony was not convincing and there were inconsistencies in his testimony with respect to the details of the events. The Witness hesitated when he was asked to describe the Landlords' Agent and the witness said it was too dark to see the Landlords' agent because it was night. The Tenant then corrected the Witness as it was still day light when the Tenant said she delivered the letter. As well the Tenant said the Witness suffers from autism and as a result may not remember things as they were. For these reasons I am not accepting the Witness's testimony. Consequently whether the letter to end the tenancy was delivered to the Landlord's Agent on August 28, 2011, becomes a question of the Tenants' word against that of the Landlords' Agent. The burden of proving a claim lies with the applicant or in this case the Tenant and when it is just the applicant's word against that of the respondent or in this case the Landlord that burden

of proof is not met. Consequently I find that the Tenants have not proven that they served the Landlords' Agent on August 28, 2011, with the letter ending the tenancy for October 1, 2011. As well on the balance of probabilities I accept that the Landlords would not have made their application if they had received the letter ending the tenancy on August 28, 2011 for October 1, 2011.

Further I have noted that the Landlords did not rent the unit out until December 1, 2011, which they said was because they thought the Tenants had a claim against the rental unit until that date, but they did have the Tenants' written note that ended the tenancy on October 3, 2011. Consequently under section 7 (2) of the Act it says that a party must do whatever is possible to minimize their loss. I find that the Landlords did not try to minimize their rental loss by renting the unit earlier than December 1, 2011; therefore I find the Landlords have only established grounds for a claim for unpaid rent for the month of October, 2011 in the amount of \$1,400.00. The Landlords had plenty of time after receiving the Tenants' note of October 3, 2011 to clean and rent the unit for November 1, 2011.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant may end a periodic tenancy not earlier than one month after the day the rent is normally due.

The Tenants did not give the Landlord proper notice to end the tenancy and the Tenants did not have the right under the Act to withhold part or all of the rent; therefore I find the Tenants are responsible for the rent of \$1,400.00 for the month of October, 2011.

The Landlords will receive monetary compensation for \$1,400.00 in unpaid rent for October, 2011 and \$604.35 for cleaning, bank charges and replacement of the garage door lock for a total amount of \$2004.35.



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As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid October, 2011rent	\$ 1,400.00
	Cleaning costs and expenses	\$ 604.35
	Recover filing fee	\$ 50.00
	Subtotal:	\$2,054.35
Less:	Security Deposit	\$ 700.00
	Subtotal:	\$ 700.00
	Balance Owing	\$ 1,354.35

Conclusion

A Monetary Order in the amount of \$1,354.35 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

Dispute Resolution Officer