



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession due to unpaid rent, for a monetary order for money owed or compensation for damage or loss, unpaid rent and damage to the rental unit, authority to retain the tenants' security deposit in partial satisfaction of her monetary claim and to recover the filing fee for the application.

The landlord and tenant SV appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

There was no issue raised concerning the landlord's delivery of her evidence package to the attending tenant.

Preliminary Issue #1-I asked the landlord to confirm service of her application and Notice of Hearing (the hearing package) to the two tenants not attending the hearing. The landlord stated that she served tenants JH and SB with the hearing package by sending the same to their address provided at move-in. The landlord confirmed that she had not been provided these tenants' written forwarding address, but has tried to ascertain their address, without success.

As I explained to the landlord and the attending tenant, I was compelled to exclude tenants JH and SB from consideration in this hearing as they were not served in a manner complying with section 89 of the Act.

Preliminary Issue #2-The landlord's application requested an order of possession; however the last tenant vacated the rental unit by April 14, 2012. I therefore have excluded the landlord's request for an order of possession.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, for authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy started on September 1, 2011, monthly rent was \$1950.00 and the tenants paid a security deposit of \$975.00 on or about July 1, 2011.

The tenant stated he vacated the rental unit in early April 2012, and the landlord, as agreed previously, stated that the last tenant had vacated by April 15.

The landlord's monetary claim is as follows:

Unpaid rent for April	\$1950.00
Suite cleaning	\$319.20
Garbage removal	\$101.34
Garbage bags	\$13.43
Toilet repair	\$10.07
Replace burnt cookware	\$39.51
Municipal dump fees	\$24.00
Stain remover	\$11.31
New keys	\$4.99
Photocopying	\$39.19
Registered mail	\$37.63
Filing fee	\$50.00
Total	\$2827.85

Landlord's evidence-Notice of a Final Opportunity to Schedule a Condition Inspection, condition inspection report, a 10 Day Notice to End Tenancy for Unpaid Rent dated April 5, 2012, the tenancy agreement, a cheque for April's rent, returned NSF, utility bills, receipts for expenses claimed and photographs of the rental unit at the end of the tenancy.

Landlord's testimony:

The tenants failed to pay rent for the month of April 2012, resulting in the landlord issuing a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord is owed \$1950.00, for unpaid rent.

The state of the rental unit at the end of the tenancy was deplorable, causing the landlord to expend sums in cleaning and remediating the damage to the rental unit. The tenants left most if not all their belongings and personal property, which required removal. The photographs depict the state of the rental unit.

The tenants were obligated to pay 37% of the total utilities for the home, and failed to pay their final portion.

Tenant's testimony:

The tenant did not leave the rental unit in the condition as alleged by the landlord, as he left the rental unit prior to the other tenants.

The other tenants were the cause of any of the damage or clean-up.

The tenant agreed that rent for April was not paid.

The tenant questioned why he was being held responsible for the costs as opposed to the other tenants.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The three named tenants were co-tenants in the rental unit and are therefore jointly and severally liable for meeting the requirements of the tenancy agreement and obligations for the landlord's losses.

The law places the responsibility on the tenants to apportion among themselves the amount owing to the landlord. Furthermore, as co-tenants they are jointly and severally liable for debts and damages relating to the tenancy. This means the landlord may

recover the full amount of money due from all three or any one of the tenants. I therefore make my findings as they related to tenant SV.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

Unpaid rent-The tenant agreed that rent for April was not paid. I therefore find the landlord has proven her monetary claim for \$1950.00

Unpaid utilities-The landlord's undisputed evidence shows that the tenants failed to pay for their share of the utilities as required by the tenancy agreement. The landlord provided evidence of the amount owed. I therefore find the landlord has proven her monetary claim for hydro and gas charges in the amount of \$228.18.

Suite cleaning, garbage removal, garbage bags, toilet repair, municipal dump fees, stain remover- I find the landlord provided sufficient, undisputed evidence of the unclean and unrepaired state of the rental unit caused by the tenants which went well beyond reasonable wear and tear, causing the landlord to incur a loss. In reaching this conclusion, I was persuaded by the condition inspection report, the photos of the rental unit at the end of the tenancy and the receipts showing payments. I therefore find the landlord has proven her monetary claim for \$484.34.

Burnt cookware-I do not find the landlord provided sufficient evidence that the cookware needed replacing or the age of the cookware. I therefore find that the landlord has not met her burden of proof and I dismiss her monetary claim for \$39.51.

Photocopying/photos and registered mail expenses- I find that I do not have authority to award any costs related to a dispute resolution proceeding other than the filing fee and I therefore dismiss the landlord's claim to recover these costs.

Conclusion

The landlord has established a total monetary claim of \$2712.52, for loss of rent revenue for April of \$1950.00, unpaid utilities for \$228.18, suite cleaning, garbage removal, garbage bags, toilet repair, municipal dump fees, stain remover for \$484.34 and for recovery of the filing fee of \$50.00.

I allow the landlord to retain the tenants' security deposit of \$975.00 in partial satisfaction of the monetary claim and grant the landlord a monetary order in the amount of \$1737.52 for the balance due.

The monetary order for \$1737.52 is enclosed with the landlord's Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the tenant fail to comply with this monetary order.

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: June 25, 2012.

Residential Tenancy Branch