



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"), requesting a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the 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.

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

Are the landlords entitled to a monetary order, for authority to retain the tenants' security deposit and for recovery of the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began on September 1, 2010, that it ended on April 30, 2012, monthly rent began at \$2000.00, and the tenants paid a security deposit of \$2000.00 at the beginning of the tenancy.

The landlord's monetary claim is in the amount of \$2000.00, which is comprised of alleged loss of revenue for the months of January through April 2012, of \$500.00 each month.

The landlord's relevant evidence included the tenancy agreement, a notice of the tenants' intention to vacate and a letter from the tenants providing a forwarding address and requesting their security deposit.

In support of their position that they are entitled to a monetary order for \$2000.00, the landlord stated that the tenants informed him on December 30, 2011 that they were

ending the tenancy on January 31, 2012 due to tenant DT's unemployment issues and being unable to afford the current rent.

The landlord stated that he was already in Mexico at the time for three months, so he contacted his wife who was still in town, landlord BT, and asked her to make an arrangement with the tenants for continuing their tenancy.

The landlords stated that the parties agreed that monthly rent would be reduced to \$1500.00 per month. The tenants gave the landlords 4 post dated rent cheques.

The landlord stated that upon his return, he learned that tenant DS was still employed when he saw her at her place of employment, and additionally the tenant informed him she was not responsible for having the rent reduced. The landlord stated that the tenant agreed he could keep the tenants' security deposit.

In response, the tenant stated that she did not inform the landlord that she was becoming unemployed, but rather she would be losing income of 25%, and that they could not afford the rent. The tenant denied ever misrepresenting that she didn't work, saying that the landlords' daughter works for her at her place of employment.

The tenant stated she paid the landlords four cheques for the renegotiated monthly rent, in advance, and questioned why she was being asked for additional rent.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party 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.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the case before me, the landlords have submitted insufficient evidence that the tenants violated the tenancy agreement or the Act as I find the parties came to a mutually agreeable reduction in rent, from \$2000.00 per month to \$1500.00 per month for the months of January through April 2012, and that the tenants paid that amount.

I therefore find the landlords failed to meet step 2 of their burden of proof and I therefore dismiss their claim for \$2000.00, without leave to reapply.

As I have dismissed the landlords' monetary claim, I also dismiss their request to recover the filing fee of \$50.00.

Due to the landlords' unsuccessful application, I do not find they are entitled to retain the tenants' security deposit. I therefore direct the landlords to return the tenants their security deposit in the amount of \$2000.00. I grant the tenants a monetary order pursuant to section 67 of the Act for the amount of \$2000.00.

The monetary order for \$2000.00 is enclosed with the tenants' 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 landlords fail to comply with this monetary order.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenants are granted a monetary order of \$2000.00, for the return of their security deposit.

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: July 10, 2012.

Residential Tenancy Branch