



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

At the outset of the hearing the Landlord confirmed that there were two limited company names listed as the landlords. Upon further clarification the Landlord requested that I amend the style of cause to ensure that the Landlords are listed as two separate company names.

Based on the foregoing, and upon review of the evidence before me, I approved the Landlord's request to change the style of cause, in accordance with section 64 (3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a notarized affidavit of service which indicates the Tenant J.W. was personally served with copies of the application for dispute resolution and the hearing documents on June 1, 2012. The male Tenant, J.J., was served the application and hearing documents by registered mail on June 29, 2012. The Landlord submitted a copy of the Canada Post tracking information which indicates the registered mail package was picked up by S.W., the female Tenant's mother, who resides with the Tenants.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the application and hearing documents. The second Tenant, J.J. did not sign for the registered mail

package sent to him; therefore I find there is insufficient evidence to prove the Tenant J.J. was aware of the claims being brought against him.

The Landlord was advised of the foregoing and she decided to proceed with the hearing against only the Female Tenant, J.W., who has been properly served with Notice of this Proceeding. As the second Tenant J.J. has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Male Tenant is dismissed without leave to reapply.

The Landlord appeared at the hearing and provided affirmed testimony. No one appeared on behalf of the Tenants. As I have found that the Tenant J.W. was properly served notice of this proceeding I continued in her absence.

Issue(s) to be Decided

1. Are the Landlords entitled to a Monetary Order?

Background and Evidence

The Landlord affirmed that they entered into a verbal tenancy agreement with the Tenants that was scheduled to begin on February 1, 2012. The rental unit was vacant so the Tenants were allowed to occupy the unit early, on January 24, 2012. Rent was payable on the first of each month in the amount of \$1,050.00 and on January 24, 2012 the Tenants paid \$525.00 as the security deposit. No condition inspection forms were completed at move in or move out.

The Landlord submitted that when the Tenants failed to pay April 1, 2012 rent she served them a 10 Day Notice to end tenancy for unpaid rent on April 5, 2012. The Tenants kept telling her they were going to pay the rent and when she attended on April 10, 2012 they still did not have the rent to give to her. When she returned the next couple of days they did not answer the door so she posted a notice of entry on the door and found the unit vacant when she entered on April 15, 2012.

The Landlord pointed to her evidence which included, among other things, pictures of the inside of the unit, statutory declaration for service, a receipt from the handyman who performed the work, and copies of receipts for supplies that were purchased.

The Landlord is seeking \$1,454.85 which was paid to the handyman to: clean the unit, paint the unit to return the walls back to the original cream color, repair the closet door, replace medicine cabinet, remove metal decals from the windows, and for supplies.

The Landlord initially asserted the photos were taken April 15, 2012 and when I began to question the cleanliness of the unit she said the photos were taken after the unit had been cleaned.

She is also seeking to recover the balance owing for April rent. She noted that the Tenants paid her \$400.00 on May 10, 2012 which leaves an outstanding balance due of \$650.00.

The Landlord stated that the Tenants abandoned the unit without providing her with a forwarding address. She had known they previously resided with J.W.'s mother and after hiring a collection agency she determined that they had moved back in with J.W.'s mother.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant J.W. who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlord and corroborated by their evidence.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit with some damage, including the paint that was improperly applied without the Landlords' permission, at the end of the tenancy.

Upon review of the Landlord's evidence, I find there to be insufficient evidence to prove the unit required 4.5 hours of cleaning, or 12.25 hours of repairs. I further find that the Landlord cannot be reimbursed for tools of the trade when they are paying a worker a journeyman wage. Therefore, as per the foregoing, I find the Landlords have met the burden of proof for damages in the amount of **\$1,198.79** (\$1,454.85 - \$90.00 cleaning - \$100.00 labour for repairs - \$66.06 of supplies).

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. In this case April 2012 rent was due on the 1st in the amount of \$1,050.00 and the Tenants only paid a partial amount of \$400.00 on May 10, 2012. Therefore I award the Landlord the balance due for April 1, 2012 rent in the amount of **\$650.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Damages & repairs	\$1,198.79
April 1, 2012 unpaid rent	650.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,898.79
LESS: Security Deposit \$525.00 + Interest 0.00	<u>-525.00</u>
Offset amount due to the Landlords	<u>\$1,373.79</u>

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The claim against the male Tenant, J.J. has been dismissed, without leave to reapply.

The Landlord has been awarded a Monetary Order against the female Tenant J.W. in the amount of **\$1,373.79**. This Order is legally binding and must be served upon the Tenant J.W.

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: August 21, 2012.

Residential Tenancy Branch