



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for alleged unpaid rent, for alleged damage to the rental unit, which includes cleaning, for compensation under the Act and the tenancy agreement for losses, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only one of the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenants with the Application and Notice of Hearing by registered mail sent on June 22, 2012, and deemed under the Act to be received five days later. However, the Tenants did not appear at the hearing. I find the Tenants have been duly served in accordance with the Act.

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 monetary compensation from the Tenants?

Background and Evidence

This tenancy began on June 1, 2011, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,600.00 and the Tenants paid a security deposit of \$800.00 on June 1, 2011. The monthly rent was due on the first day of the month.

The Landlord testified that no incoming condition inspection report was performed. The Landlord alleges the Tenants did not want to attend the outgoing condition inspection report.

Based on the affirmed testimony and the evidence provided by the Landlord, I find that the Tenants sent the Landlords an email on May 1, 2012, stating they were giving notice to end the tenancy on June 1, 2012.

The Tenants vacated the property, however, the Landlords claim the Tenants did not fully vacate until June 2, 2012.

The Landlords claim they have incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlord claims as follows:

a.	Loss of rent for June 2012	1,600.00
c.	Fridge handle	50.00
d.	Fireplace glass	135.00
e.	Carpet cleaning	56.00
f.	Cleaning rental unit	315.00
g.	Filing fee	50.00
	Total claimed	\$2,802.48

Analysis

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

I find the Tenants breached the Act and the tenancy agreement by failing to give the required notice and by failing to serve the Landlords properly with this.

Under the Act and tenancy agreement the Tenants had to give the Landlords one month of Notice to End Tenancy. A 30 day notice is not recognized under the laws of British Columbia. If the Tenants wanted to end the tenancy on May 31, 2012, they should have given the Landlords their Notice to End Tenancy in writing and signed, no later than April 30, 2012, pursuant to section 52 of the Act. Furthermore, I note that the Act does not recognize service of any documents by email.

Therefore, I find the Tenants breached the Act and tenancy agreement by failing to give the Landlords the required Notice to End Tenancy.

I dismiss the remainder of the Landlords claims without leave to reapply. In a claim for damage or loss under the Act or tenancy agreement, the Landlords must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

In this instance, I find the Landlords failed to prove what the condition of the rental unit was prior to the Tenants taking possession and have insufficient evidence to prove the alleged damages or losses occurred due to the action or neglect of the Tenants.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Having found the Tenants beached the Act and tenancy agreement by not giving proper Notice, I find that the Landlords have established a total monetary claim of **\$1,625.00** comprised of the above described amounts and \$25.00 towards the fee paid for this application. I have reduced the amount awarded for the filing fee as the Landlords were only partially successful in their claims.

I order that the Landlords retain the deposit and interest of **\$800.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$825.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that by failing to perform the incoming condition inspection report the Landlords extinguished their right to claim against the security deposit for damage to the rental

unit, pursuant to section 24 of the Act. Nevertheless, the security deposit may be used to offset the claim for rent, and accordingly I have done so above.

Conclusion

The Tenants breached the Act and tenancy agreement by failing to give the required Notice to End Tenancy. The other claims of the Landlords are dismissed without leave to reapply. The security deposit may be retained by the Landlords to offset some of the rent owed and the Landlords have a monetary order for the balance.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2012.

Residential Tenancy Branch