



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC; MND; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for damages; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord's agents gave affirmed testimony at the Hearing.

The Landlord's agents testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to each of the Tenants, via registered mail, to the rental unit on October 15, 2012. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. The Landlord's agents stated that the documents were returned to the Landlord on November 6, 2012.

Based on the affirmed testimony of the Landlord's agents and the documentary evidence provided by the Landlord, I am satisfied that both of the Tenants were duly served with the Notice of Hearing documents by registered mail. Failure to accept delivery does not negate the provisions of the Act with respect to service, which is deemed to be affected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenants did not sign into the teleconference and the Hearing proceeded in their absence.

Preliminary Matters

The Landlord's agents testified that the City address of the rental unit on the Application for Dispute Resolution was incorrect. They provided the correct City name and stated that the documents were mailed to the correct City. Therefore, I amended the Landlord's Application to reflect the correct City.

The Landlord's agents testified that the Tenants did not dispute the Notice to End Tenancy for Cause issued on September 28, 2012, and that they moved out of the rental unit on October 31, 2012. The Landlord has taken possession of the rental unit and therefore their application for an Order of Possession is dismissed.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for damages sustained to the suite directly below the rental unit?

Background and Evidence

The Landlord's agents gave the following testimony and evidence:

The Landlord provided a copy of the tenancy agreement in evidence. Monthly rent was \$950.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 on May 31, 2010.

The Landlord's agents testified that the Tenants provided a forwarding address at the move out condition inspection, which they provided at the Hearing.

The Landlord received a call from the rental property's strata corporation in May, 2012, advising that a leak from the rental unit had caused damage to the owner-occupied suite directly below the rental unit. It was discovered that a large unauthorized fish tank had leaked, causing substantial damage to the suite below. Placement of the fish tank in the rental unit was a breach of two clauses of the tenancy agreement: no pets; and no aquariums without the Landlord's prior written permission. In addition, the Tenants did not have tenant's insurance, contrary to another term in the tenancy agreement.

The Tenants agreed to pay for the damages, but asked if a friend could complete the repairs. The Landlord advised the Tenants that they would be required to contact the strata corporation and obtain a written release from the strata and the owners of the suite below. The Tenants did not comply with this request and the Tenants took no action on the repair.

In mid-June, 2012, the Landlord obtained an estimate from a professional contractor to complete the work, which cost \$4,256.00. A copy of the invoice was provided in evidence. The Tenants were provided a copy of the invoice, but have not paid any monies towards payment of the invoice.

The deductible amount on the strata corporation's insurance is \$5,000.00

Analysis

Based on the undisputed testimony and documentary evidence provided, I find that the Landlord has established a monetary claim for damages in the amount of **\$4,256.00**. I find that the Landlord suffered a loss due to the neglect of the Tenants in violation of the

tenancy agreement and that the Landlord has provided sufficient evidence of the amount required to compensate the Landlord for its loss.

Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of the Landlord's monetary claim. No interest has accrued on the security deposit.

The Landlord has been successful in its application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlords a Monetary Order, calculated as follows:

Damages	\$4,256.00
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$4,306.00
Less security deposit	<u>- \$450.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$3,856.00

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$3,856.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: December 03, 2012.

Residential Tenancy Branch