



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNDC, MNSD and FF
Tenants: MNDC and FF

Introduction

This hearing was convened on applications by both the landlord and the tenants.

By application of September 10, 2012, the landlord seeks a Monetary Order for unpaid rent for March and loss of rent for April 2012 and recovery of the filing fee for this proceeding.

The landlord withdrew a claim to retain the security deposit made in error as it had been disposed of in a previous hearing.

By application of September 26, 2012, the tenants seek a Monetary Order for loss or damage under the legislation or rental agreement and recovery of their filing fee.

As a matter of note, this tenancy was the subject of a hearing on September 10, 2012 on the tenants' application for return of their security deposit and damage or loss under the rental agreement or legislation.

In the result, the Dispute Resolution Officer found that the landlord had breached section 38(1) of the Act by failing to return the security deposit or make application to claim against it within the latter of 15 days of the end of the tenancy or receipt of the tenants' forwarding. As mandated by section 38(6) of the Act, the Dispute Resolution Officer issued a Monetary Order in favour of the tenants for double the security deposit.

The officer hearing also heard claims by the tenants for reimbursement for damage to a car and compensation for damage or loss under the legislation or rental agreement in the form of rent for the month following the end of the tenancy. Both claims were dismissed on their merits.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for unpaid rent and loss of rent for March and April of 2012 and whether the tenants are entitled to a monetary award for loss or damage under the legislation or rental agreement.

Background and Evidence

This tenancy began on December 1, 2009. Rent was \$975 per month including parking and, there was a security deposit of \$475 which was returned to the tenants in double as a result of the previous hearing.

During the present hearing, the landlord (property manager), gave evidence that the tenants had vacated on March 31, 2012 after they had served notice on March 3, 2012 by facsimile letter.

The landlord submitted a copy of her letter of reply to the tenant dated March 5, 2012, cautioning that the notice was late and could expose the tenant to a claim in loss of rent for April 2012 if the landlord was not able to find a new tenant. The letter expressed regrets at the tenants' choice to leave the tenancy, cited the 15-day provision for return of the security deposit and proposed a move-out condition inspection March 31, 2012.

The letter made reference to the underlying cause of the tenancy ending which was restoration work in the rental building due to water intrusion from the roof, ongoing from January 2012 and which the landlord stated had been completed in May 2012.

The landlord stated that it was not until the hearing on September 10, 2012 that it was brought to her attention by staff that the tenant had not paid the rent for March 2012. The tenant stated that she did not recall if she had paid the March rent or not, and submitted no proof of payment.

The landlord stated that a new tenancy had not begun in the rental unit until November 2012 as there had been 11 vacancies in the rental building when the tenancy ended.

The tenants' application seeks a monetary award of \$950 damage or loss, specifically loss of quiet enjoyment of the rental unit. She stated that the disturbances were worsened by her medical challenges and the fact that her son, a post-secondary student, was distracted from his studies. The landlord said the work was carried out during business hours only.

The tenant said she felt it was unfair of the landlord to have required full notice in view of the disturbances caused by the renovation work.

Analysis

Determining a lawful and just conclusion to this dispute has been made more difficult by breaches or poor practices by both parties.

The tenants breached section 45 of the *Act* by failing to give notice to end the tenancy on March 31, 2012 until March 3, 2012 when the end date required notice no later than February 28, 2012. Then, the tenants failed to pay the rent for March 2012.

Although the landlord reminded the tenant of the 15-day provision for return of the security deposit in her letter of March 5, 2012, the landlord failed to return or make timely application to claim on the deposit leading to the decision of September 10, 2012, and had failed to note that the tenants had not paid the March rent until then.

In any event, I find as fact that the tenants did not pay the March rent and that the landlord is entitled to a Monetary Order for \$975.

However, the landlord has provided me with no documentary evidence of efforts to find a new tenant to demonstrate having done whatever is reasonable to minimize the loss as required under section 7(2) of the *Act* on a claim for loss or damage.

Therefore, I decline to award the loss of rent for April 2012. I further decline to award the landlord's filing fee for this proceeding.

As to the tenants' application, I note that there were two items – damage to one tenant's car and the claim for payment of the tenants' April rent – made under section 7 of the

Act for damage or loss under the legislation or rental agreement addressed at the hearing on September 10, 2012.

The doctrine of *res judicata* provides that a matter previously decided cannot be applied for a second time. In addition, this doctrine precludes an applicant from bringing an action that ought to have been raised in a previous proceeding.

In the present matter, the loss or damage components of the tenants' previous application were based on a claim arising from the ongoing renovations in the rental building. The Dispute Resolution Officer gave those claims, and the evidence of the respondent, full consideration and the claims were dismissed on their merits.

In the present matter, the tenants once again seek compensation for damage or loss, but this time for loss of quiet enjoyment which I find was implicit in their previous claim for future rent.

Therefore, I find that the application, in its essence, arises from the same cause as in the previous hearing. Therefore, the application is dismissed as *res judicata* without leave to reapply.

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for \$975.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

The tenants' application is dismissed without leave to reapply.

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: November 23, 2012.

Residential Tenancy Branch