Dispute Resolution Services

DECISION

<u>Dispute Codes</u>   OPC MND MNR FF

<u>Introduction</u>

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for cause and a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; and to recover the cost of the filing fee from the Tenants for this application.

The Landlord affirmed that he sent each Tenant copies of his application for dispute resolution, the notice of hearing documents, and his evidence by registered mail on November 23, 2012. Copies of the Canada Post receipts and envelopes were provided in the Landlord's evidence. Based on the submissions of the Landlord I find that each Tenant was sufficiently served notice of this proceeding, in accordance with the *Act* and I proceeded in the Tenants' absence.

<u>Issue(s) to be Decided</u>

1) Has the Landlord regained possession of the rental unit?
2) Should the Landlord be issued a Monetary Order?

<u>Background and Evidence</u>

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy for cause issued November 7, 2012; Canada Post receipts; the tenancy agreement; warning notices issued to the Tenants; and letters written by the Tenants. No evidence was submitted by the Tenants.

The Landlord confirmed the parties entered into a written month to month tenancy agreement that began on June 21, 2012. Rent was payable on the first of each month in the amount of $1,050.00 and on June 8, 2012 the Tenants paid $525.00 as the security deposit.

The Landlord advised that when the Tenants failed to follow the no smoking term of their tenancy he personally served them a 1 Month Notice on November 7, 2012. The

Tenants vacated the rental property and the Landlord regained possession on December 8, 2012. The Landlord withdrew his request for an Order of Possession and requested to proceed with his claim for December 2012 unpaid rent and for damages to the unit.

Upon review of the Landlord's evidence it was noted that no evidence was provided with respect to damages or repairs. The Landlord confirmed that he had not sent additional evidence and insisted that he proceed with his request for damages in the amount of $2,000.00.

The Landlord confirmed that rent had been paid in full up to November 30, 2012 and that the Tenants vacated the property on or before December 8, 2012 leaving it damaged. The rental unit was not re-rented in December 2012 and has not been rented in January as of yet.

He stated there were three distinct items he was seeking which included costs for cleaning the unit (appliances, walls, and bathroom), plumbing repairs due to garbage being put down the sink; labour to clean up the property and other costs incurred to clean and repair the unit.

The Landlord advised that no condition inspection report forms were completed at move in or at move out. He did not provide pictures of the rental unit before or after this tenancy, and he does not have receipts for work done to the unit as they did the repair work themselves.

Analysis

The Landlord withdrew his request for an Order of Possession as he regained possession of the rental unit on December 8, 2012.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

The evidence supports the Tenants were served a 1 Month Notice to end tenancy on November 7, 2012. The effective date of the Notice would automatically correct to December 31, 2012, in accordance with section 53 of the Act.

The Tenants vacated the property December 8, 2012, prior to the effective date of the Notice and without paying the December rent. I find the Tenants' actions to be a breach of section 26 of the Act which stipulates that a tenant must pay rent in accordance with the tenancy agreement. Accordingly, I award the Landlord December 2012 rent in the amount of **$1,050.00**.

The Landlord has proceeded with his claim for damages to the unit, site, or property for $2,000.00. In the absence of condition inspection report forms or any evidence to prove the Landlord suffered a loss or the actual cost of such a loss, I find there is insufficient evidence to prove the Landlord's claim. Accordingly, I dismiss the Landlord's claim for damage, without leave to reapply.

The Landlord has been partially successful with his claim; therefore I award partial recovery of his filing fee in the amount of **$25.00.**

Monetary Order – I find that the Landlord is 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:

December 2012 Rent	$1,050.00
Filing Fee	25.00
SUBTOTAL	$1,075.00
LESS: Security Deposit $525.00 + Interest 0.00	-525.00
Offset amount due to the Landlord	**$ 550.00**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$550.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: January 04, 2013.

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Residential Tenancy Branch