



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

The Landlord had filed their application seeking an Order of Possession and a Monetary Order and indicated on their application that the Tenants have vacated the rental unit without proper notice. The Landlord confirmed they regained possession of the unit and therefore, I amended the application to remove their request for an Order of Possession, in accordance with section 64 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; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlords affirmed that each Tenant was served copies of their application and notice of hearing documents on October 18, 2012, by registered mail. Canada Post receipts were provided in the Landlords' evidence along with copies of each envelope which indicates the packages were unclaimed. The Landlord advised that the Tenants moved just around the corner and that she had personally delivered their mail to them their just prior to mailing her hearing documents.

Case Law provides that refusal to pick up registered mail does not avoid or negate service. Based on the submissions of the Landlord I find each Tenant was sufficiently served Notice of this proceeding in accordance with section 89 of the Act, and I continued in their absence.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: 21 photos; Canada Post receipts; photocopies of the returned registered mail packages; a receipt for cleaning up the rental unit; and a carpet cleaning receipt.

The Landlords advised that the parties entered into a verbal tenancy agreement that began in approximately August 2010. Rent was payable on the first of each month in the amount of \$1,250.00 and the Tenants paid \$625.00 as the security deposit. No condition inspection reports were completed at move in or move out.

The Landlords stated that they have owned this house for approximately five years. The house consists of two self contained suites, one in the basement and one in the upper floor. The back yard is fenced and divided into two areas so each rental unit has access to one side, and they share a common front yard. There was one tenancy in the upper unit prior to these Tenants and four tenancies in the basement suite.

The Landlord submitted that they were in the process of evicting the downstairs tenant so they were attending the rental unit regularly to see if they vacated. They had attended around September 28, 2012 and noted that both the upper and lower units were still being occupied. When J. H. attended on approximately October 2 or 3rd, 2012, he went into the garage and noticed that the access door to the upstairs unit was open and it appeared that the upstairs Tenants had moved out, without providing proper notice. He entered the unit and confirmed that they had vacated the unit and left it a mess. The downstairs tenant had also vacated.

They are seeking compensation for \$1,250.00 October 2012 unpaid rent, utilities of approximately \$165.00, damage to the unit which included \$292.00 for carpet cleaning, \$896.00 for janitorial, window washing, and removal of garbage and clean up of yard. They have not submitted receipts or claims for all of the other work that was required such as flea treatments. Upon review of the cleaning invoice I asked the Landlords how much of the receipt pertained to the lower rental unit. They argued that the entire amount claimed was for work performed for the upstairs rental unit.

I offered to send the Landlords a copy of the Guide for Landlords and Tenants in BC however, D.G. declined my offer.

Analysis

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.

I accept the undisputed evidence that the Tenants failed to pay October 1, 2012 rent, in accordance with the tenancy agreement which is a breach of section 26 of the Act. I further accept that the Tenants vacated the property on or before October 2, 2012, without notice to the Landlords as required under section 45 of the Act. Accordingly, I award the Landlords unpaid rent for October 2012 in the amount of **\$1,250.00**.

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.

After consideration of the undisputed testimony and evidence I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

The Landlord submitted evidence of the actual amounts claimed totaling \$1,480.00 for the cost of cleanup of \$896.00 and \$292.00 for carpet cleaning. Accordingly, I award the Landlord **\$1,480.00** for cleaning and carpet cleaning.

There was no evidence of outstanding utilities or proof that the Tenants were issued a 30 day demand for payment of utilities. Therefore I dismiss the Landlords' claims for utilities, without leave to reapply.

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

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:

October 2012 rent	\$1,250.00
Cleaning & carpet cleaning	1,480.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,780.00
LESS: Security Deposit \$625.00 + Interest 0.00	<u>- 625.00</u>
Offset amount due to the Landlord	<u>\$2,155.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,155.00**. 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 17, 2013

Residential Tenancy Branch

