



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, FF
For the tenants: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit and pet damage deposit, a monetary order for unpaid rent and utilities, and for recovery of the filing fee.

The tenants applied for a return of their security deposit and pet damage deposit, doubled, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the substantial amount of written evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenants’ security deposit and pet damage deposit, to a monetary order and to recover the filing fee?
2. Are the tenants entitled to a monetary order, which would include their security deposit and pet damage deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties is that this month to month tenancy began on August 30, 2012, ended on November 30, 2012, when the tenants vacated the rental unit, monthly rent was \$900.00 and the tenants paid a security deposit and a pet damage deposit of \$450.00 each at the beginning of the tenancy.

Landlord's application-

The landlord's monetary claim is \$1100.00, which includes \$900.00 for loss of rent revenue for the month of December 2012 and \$200.00 for unpaid utilities. The landlord stated that the actual claim for unpaid utilities is reduced to \$94.76, as she has received the actual bill since filing her application for dispute resolution. The landlord also seeks recovery of the \$50.00 filing fee.

Landlord's testimony-

On November 9, 2012, the landlord received an email from the female tenant, with a reference to an attachment, which the landlord could not open. The landlord notified the tenant she could not open the document, which resulted in a text message being sent by the tenant to the landlord notifying her, the landlord, that they were vacating the rental unit a month from that date, on December 9, 2012.

The landlord made immediate attempts to re-rent the rental unit for the first of January 2013, as she believed the tenants would be in the rental unit until December 9, 2012.

Due to the insufficient notice provided by the tenants, the landlord sustained a loss of revenue for December 2012.

The tenants were responsible for paying half of the utilities for the residential property, as per the tenancy agreement, and that the tenants owed \$94.76 through the end of the tenancy.

Tenants' testimony in response-

The tenant denied owing for loss of revenue equal to a month's rent as she gave the landlord a month's notice, more specifically giving the landlord notice on November 9 that they were vacating on December 9, 2012, which is a 30 day notice.

Tenants' application-

The tenant's monetary claim is in the amount of \$2127.24, which includes their security deposit and pet damage deposit of \$450.00 each, doubled, and lack of use of the garage space promised to them in the amount of \$327.24.

Tenants' testimony-

The tenant sent a text message to the landlord on December 2, 2012, with the tenants' forwarding address and to date the landlord has not returned the tenants' security deposit and pet damage deposit. The landlord made no arrangements for a final condition inspection of the rental unit, entitling the tenants to receive their two deposits, doubled.

As to the issue of lack of garage space, the landlords maintained some of their possessions in the garage, preventing the tenants from using all the agreed upon garage space. As the landlord failed to move their possessions, the tenants contend they are entitled to monetary compensation for not receiving all their space promised pursuant to the tenancy agreement.

The tenants also mentioned that there were plumbing issues causing flooding and an unannounced visit from a furnace repairman; however, the tenants made no claim for a specific monetary amount.

Landlord's testimony in response-

The landlords maintained appliances in the garage, which was shared with the upper tenants, in case of an appliance breaking down. The tenants never made mention that they needed any extra garage space and the female tenant in particular told the landlord that the garage was not an issue.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements pursuant to sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

As to the issue of unpaid rent or loss of revenue, Section 45 of the Act requires a tenant to give written notice to end a month to month tenancy that is not earlier than one month

after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy, or in this case, if the tenants wanted to end the tenancy by the end of November 2012, a written notice was required by October 31, 2012.

In the case before me, I find the tenants submitted insufficient notice to end the tenancy by their failure to give one clear month's notice and are therefore liable to the landlord for loss of revenue for the month of December 2012. I find that the landlord took steps to mitigate the loss by immediately advertising the rental unit. As such, I find the landlord has proven a monetary claim of \$900.00 for loss of revenue for December 2012.

With respect to the utilities, the landlord provided two statements, one for the hydro and one for the water bill, and the tenants did not deny that these bills were their responsibility. I accept the landlord's oral evidence that she paid the amount of \$94.76 in satisfaction of the outstanding utilities and I therefore find the landlord has proven a monetary claim in that amount.

I find the landlord's application contained merit and I allow her recovery of the filing fee of \$50.00.

Tenants' application-

When a landlord fails to offer opportunities to inspect the rental unit both at the beginning and end of the tenancy and properly complete a condition inspection report, pursuant to sections 23 and 35 of the Act, the landlord's claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act. In this case, the landlord applied to keep the security deposit and pet damage deposit in compensation of a monetary claim for unpaid rent and unpaid utilities, not for damage to the rental unit.

As the landlord's claim was for loss of revenue, or unpaid rent, and unpaid utilities, I find that the landlord complied with the requirement under section 38 and Residential Tenancy Branch Policy Guideline 17 (9) to make an application within 15 days of receiving the tenants' written forwarding address to keep the two deposits and the tenants are therefore not entitled to have their two deposits doubled. I will address the issue of the return of the tenants' security deposit and pet damage deposit hereafter in this Decision.

As to the tenants' claim for compensation for lack of use of a portion of the garage, I find the tenants failed to submit proof that they took steps to mitigate their claimed loss. Reasonable measures would be to notify the party in writing when issues arise and can be dealt with at the time, not after the tenancy has concluded.

I therefore find the tenants submitted insufficient evidence of taking reasonable measures to minimize their loss and I therefore dismiss their monetary claim of \$327.24.

I decline to award the tenants recovery of their filing fee as I find their request to have the security deposit and pet damage deposit doubled and their claim for compensation for lack of garage space lacked merit.

Conclusion

The landlord has proven a monetary claim of \$1044.76, comprised of loss of revenue for December 2012 in the amount of \$900.00, unpaid utilities in the amount of \$94.76 and the filing fee of \$50.00.

I allow the landlord to retain the tenants' security deposit of \$450.00 and pet damage deposit of \$450.00 in partial satisfaction of her monetary claim, and I grant the landlord a final, legally binding monetary order for the balance due in the amount of \$144.76, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of enforcement may be recoverable from 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* and is being mailed to both the applicant/landlord and the applicant/tenants.

Dated: February 19, 2013

Residential Tenancy Branch

