



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution he confirmed that he regained possession of the rental unit on March 13, 2013, and therefore, he was withdrawing his request for an Order of Possession. He also advised that he wished to amend his application for a Monetary Order to include money for unpaid rent and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord had listed the aforementioned items in his notes written in the details of the dispute on the application form; therefore the Tenants were made aware of the Landlord's request in the initial application and would not be prejudiced by amending the application. Based on the aforementioned, I amend the application to include the request for money for unpaid rent and money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 64 (3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for: unpaid rent; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy issued February 13, 2013 and the tenancy agreement.

The parties confirmed they entered into a fixed term tenancy that began on October 1, 2012 and was not set to end until June 30, 2013. Rent was payable on the first of each month in the amount of \$1,400.00 and on September 6, 2012 the Tenants paid \$700.00 as the security deposit. The Tenants attended the move-in inspection and N.D. attended the move out inspection on March 13, 2013 and provided the Landlord with her forwarding address at that time.

The Landlord testified that on February 13, 2013, he personally served the Tenants with a 1 Month Notice to end tenancy. After a few conversations through text messaging the Tenants informed the Landlord they would be out of the rental unit by March 2, 2013. Then on February 18, 2013, the Landlord personally served the Tenants with a letter indicating the move out inspection would be conducted on March 2, 2013, at 7:00 p.m. and that he would be out of town from March 3, 2013 to March 10, 2013. The Tenants did not agree to attend the move out inspection on March 2, 2013. When he returned to town he saw that the Tenants had vacated the unit. Another date was scheduled and N.D. attended the move out inspection on March 13, 2013.

The Tenants confirmed the Landlord's testimony that they received the eviction Notice and they told the Landlord they would be out by March 2, 2013, in a text message. They also confirmed receipt of the February 18, 2013 letter. They testified that they were mostly moved out by March 2, 2013, and that they returned on March 3, 2013, to do the cleaning. They did not attempt to contact the Landlord after cleaning because they knew he was out of town. N.B. confirmed she attended the move out inspection March 13, 2013, and provided the Landlord with her forwarding address at that time.

The Landlord stated he has not been able to re-rent the unit as of yet. He is seeking March 2013 rent of \$1,400.00, a \$25.00 late payment fee, and \$500.00 for liquidated damages to cover the cost of re-renting the unit.

The Tenants confirmed they did not pay March 2013 rent and argued they did not have to because they were evicted. They also argued that they did not have to pay the rent because the condition of the rental unit was awful. They stated the house was filthy and damaged which included a broken window.

The Tenants attempted to settle these matters however the Landlord declined stating there are additional losses that he will be bringing forward in a future claim.

In closing the Tenants argued that this process was unfair claiming at this point of the hearing that they were not properly served with notice of this proceeding. I reminded the Tenants that at the beginning of this dispute they testified that they received the Landlord's application and evidence. Now they were stating they did not find out about this proceeding until they called the *Residential Tenancy Branch*.

N.D. stated that when she attended the rental unit for the move out inspection on March 13, 2013, she saw two registered mail cards addressed to the other two Tenants (K.W. and J.W.). The Landlord had told her at that time that her friends were in a lot of trouble because they broke the lease.

I explained to the Tenants that in light of the contradictory testimony pertaining to receipt of the hearing documents, N.B.'s testimony that the registered mail was sent to the rental unit during the time they still had possession; N.B. was informed of the application on March 13, 2103, and given they attended this proceeding and provided oral evidence; I would be proceeding with my decision. The Tenants argued they were not given enough time to provide their documentary evidence. I asked what evidence they would provide and they indicated they would submit evidence to prove the state of ill repair of the house. I explained at that time that a lack of repairs was not grounds for not paying their rent or for breaking a fixed term lease.

At the conclusion of the hearing each Tenant provided a forwarding address. K.W. stated that she was representing her brother, J.W. and that his decision should be sent to her new address.

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.

Section 26 of the Act stipulates that rent must be paid in accordance with the tenancy agreement.

In this case the Tenants were issued a 1 Month eviction Notice that ended the tenancy effective March 31, 2013. The Tenants were still in possession of the rental unit after

March 1, 2013, therefore, rent was payable in accordance with the tenancy agreement. Accordingly, I find the Landlord is entitled to unpaid rent for March 2013, in the amount of **\$1,400.00**.

Section 7(1)(d) of the Regulation stipulates that a landlord may charge a non refundable fee of not more than \$25 for late payment of rent.

Section 5 of the Act stipulates that (1) Landlords and tenants may not avoid or contract out of this Act or the regulations (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the foregoing, I find the Landlord contracted out of the Act by instituting late payment fees of \$50.00 per month. Accordingly, I find this term is unenforceable and I dismiss the Landlord's claim for late payment fees.

The tenancy agreement provided for liquidated damages of \$500.00. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.

The parties confirmed they discussed the liquidated damages clause at the time they entered into the tenancy agreement. The Tenants confirmed they all initialed that clause on the tenancy agreement. I accept the Landlord's testimony that this amount was agreed upon as being reasonable costs to re-rent the unit and I award him **\$500.00** for liquidated damages.

The Landlord has primarily been successful with his 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:

Unpaid March 2013 rent	\$1,400.00
Liquidated Damages	500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,950.00
LESS: Security Deposit \$700.00 + Interest 0.00	<u>-700.00</u>
Offset amount due to the Landlord	<u>\$1,250.00</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,250.00**. 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: March 26, 2013

Residential Tenancy Branch

