



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Amended April 22, 2013: MND; MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' amended Application for a Monetary Order for damages to the rental unit and unpaid rent; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlords testified that the Notice of Hearing documents were mailed to the Tenants, by registered mail to their new address for service, on April 22, 2013. The Landlords provided copies of the receipts and tracking numbers for the registered documents.

Based on the Landlords' affirmed testimony and the documentary evidence provided, I was satisfied that the Tenants were duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the telephone conference system did not indicate that the Tenants signed into the teleconference and I informed the Landlords that we would continue in the Tenants' absence.

It is important to note that at the end of the Hearing, as I was preparing to conclude the teleconference, the Tenants' agent made her presence known by speaking. She stated that she and the Tenants had been in the conference call since the beginning of the Hearing, and couldn't understand why I had not wanted to hear from the Tenants. I explained that I was not aware that the Tenants were in the teleconference as that they had not identified themselves when I did a roll call at the beginning of the conference, and that I therefore assumed they were absent. The Tenant's agent said that she did speak, but I didn't appear to hear her. The Landlords also confirmed that they had not heard the Tenants' attempts to speak during the conference. Therefore, I informed the parties that I believed that there may have been a technical difficulty with the teleconferencing system and that I would hear from the Tenants.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent for April, 2013, and minor damages to the rental unit?
- May the Landlords apply the security deposit towards partial satisfaction of their monetary award?

Background and Evidence

The Landlords gave the following testimony:

The Landlords provided a copy of the tenancy agreement in evidence. This tenancy started on January 26, 2012 and ended when the Tenants moved out of the rental unit on April 12, 2013, as a result of a Notice to End Tenancy for unpaid rent for the month of April, 2013. The Landlords testified that they discovered that the Tenants had moved out when another occupant e-mailed the Landlords to advise they had seen the Tenants moving.

Monthly rent was \$1,500.00 per month, due the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 on January 26, 2012. The Landlords are holding the security deposit pending determination of their application.

The Landlords seek a monetary award in the amount of **\$1,500.00** for unpaid rent for the month of April, 2013.

The Landlords stated that the Tenants cleaned the rental unit at the end of the tenancy, but there was some damage for which the Landlords seek a monetary award:

Broken knob on cupboard and burned out light	\$14.01
Remove child proof devices on kitchen cupboards (Landlord's labour: three hours @ \$25.00 per hour)	\$75.00
Rehang curtains, garbage removal (Landlord's labour: one hour @ \$25.00)	\$25.00
Replace broken light sconce	<u>\$11.20</u>
TOTAL CLAIM FOR DAMAGES	\$125.21

The Landlords also seek to recover the cost of photocopies to prepare for the Hearing and the cost of registered mail, in the total amount of **\$55.76** and the cost of the **\$50.00** filing fee.

The Landlords provided copies of receipts in evidence, in support of their claim.

The Tenants and their agent gave the following testimony:

The Tenants' agent ("TZ") submitted that the Landlords' Application for Dispute Resolution was stamped as received by the Residential Tenancy Branch on April 22, 2012 and therefore questioned the Application's validity.

The Tenants agreed that they had not paid any rent for the month of April, 2013. They stated that one of the Tenants was going to school and it was costing them a fortune so they couldn't pay rent. TZ testified that the Landlord had agreed that the Tenants would only have to pay for half of the month of April, 2013, and that the Landlords would keep the security deposit for payment of that ½ month's rent.

TZ stated that on March 12, 2013, the Tenants were served with a 30 Day Notice to End the Tenancy for repeated late payment of rent and for "breach of quiet enjoyment". She submitted that the Tenants moved out on April 12, 2013, and therefore the Landlords were not entitled to any more rent for the month of April, 2013.

TZ submitted that the Landlords did not comply with the Act with respect to scheduling a Condition Inspection Report and therefore had given up their right to keep the security deposit.

TZ stated that the garbage that the Landlords refer to did not belong to the Tenants. She stated that the garbage was the Tenants' neighbour's garbage and that the only thing the Tenants left was an empty cardboard box. The Tenants agreed that they had not re-hung three panels of curtains.

TZ stated that the Tenants' had a child and that it was reasonable to expect that they would put child proofing devices on the cupboards.

The Landlords gave the following reply:

The Landlords stated that the Tenants verbally agreed that the Landlords could keep the security deposit in partial payment of April's rent, but that the Landlords told the Tenants that they expected the Tenants to pay the remainder of April's rent.

The Landlords testified that they did not know that the Tenants had placed the child proofing devices on the cabinets until after the condition inspection had been done. They stated that the Tenants did not ask permission to install the devices. The female Landlord testified that she got an estimate for the cost of removing the devices and repainting the cabinets, which amounted to \$575.00. She stated that she was able to carefully remove the child proofing devices so that the cabinets did not need to be

repainted, but it took her several hours of carefully scraping them off. The Landlords seek compensation for the female Landlord's time at \$25.00 per hour for three hours.

Analysis

I find that the Tenants' agent's submission with respect to the incorrect year being stamped on the Landlords' Application has no merit. I advised the parties that it was an obvious error, similar to a typographical error which a reasonable person would know was an error, and did not affect the validity of the Landlords' Application.

There is no provision in the Act for the recovery of the cost of preparing for a Hearing (photographs, photocopying, etc.) or for serving the other party (by registered mail, for example). These costs are to be borne by the parties. Therefore, this portion of the Landlords' application in the amount of \$55.76 is dismissed.

Neither party provided a copy of a One Month Notice to End Tenancy for Cause. However, I explained to the Tenants that such a Notice served on March 12, 2013, would not be effective until April 30, 2013. In any event, the Landlords provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent in evidence, and the Tenants agreed that they did not pay any rent for April, 2013. Section 26 of the Act provides that rent must be paid when it is due. I find that the Landlords are entitled to unpaid rent for the month of April in the amount of **\$1,500.00**.

The Tenants did not dispute the Landlords' claim with respect to the broken knob, burned out light and broken light sconce. Therefore, this portion of the Landlords' claim is granted in the total amount of **\$25.21**.

The Tenants agreed that they placed child proofing devices on cabinets in the rental unit. I find it reasonable for the Landlords to expect that they be removed at the end of the tenancy, and reasonable for the Landlords to be compensated for their work in removing the child proofing devices. I find that the Landlords considerably minimized their loss by taking on this work themselves rather than paying a professional to do it. I find that the Landlords are entitled to this portion of their claim in the amount of **\$75.00**. Similarly, the Tenants agreed that they did not re-hang the curtains at the end of the tenancy. I find that the Landlords are entitled to an award for the time that it took to re-hang the curtains and that **\$25.00** is a reasonable amount of compensation for this chore.

I make no finding with respect to the Tenants' submission that the Landlords extinguished their right to claim against the security deposit for damages. Even if I found that the Landlords had extinguished their right to claim against the security

deposit for damages, the Landlords still retain the right to set off the security deposit against unpaid rent. Therefore, pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlord's monetary award. No interest has accrued on the security deposit.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I hereby provide the Landlords with a Monetary Order against the Tenants, calculated as follows:

Unpaid rent for April, 2013	\$1,500.00
Compensation for the female Landlord's labour (4 hours @\$25.00)	\$100.00
Cost of replacing light, cabinet knob and sconce	\$25.21
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,675.21
Less security deposit	<u>- \$750.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$925.21

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$925.21** for service upon the Tenants This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 14, 2013

Residential Tenancy Branch