



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kandola Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for unpaid, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter referred to as landlord) appeared; the tenants did not appear.

The landlord gave evidence that she served each tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail on April 15, 2013. The landlord supplied the receipt and tracking number of the registered mail.

The landlord also supplied evidence that the registered mail went unclaimed, leading to my questioning the landlord further about the address used for the tenants for service of the documents. The landlord said that the address used was given to the landlord in the tenants' notice of their intent to vacate.

I find the tenants were served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenants' absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence 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.

Preliminary issue-Although in their application for dispute resolution the landlord did not list that they were seeking monetary compensation for anything other than for unpaid rent, the documentary evidence properly submitted by the landlord shows that the landlord's monetary claim sought additional compensation for alleged damages and

cleaning for the rental unit. I therefore allowed an amendment to the landlord's application to seek such further compensation for these issues.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, to authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on July 1, 2011, ended on an indeterminate date in March 2013, monthly rent was \$765, and the tenants paid a security deposit of \$367.50 at the beginning of the tenancy.

The landlord's monetary claim is in the amount of \$1130, comprised of cleaning for \$210, repairs, wallpaper and tobacco stain removal for \$80, carpet cleaning for \$75 and loss of revenue for April 2013 in the amount of \$765.

The landlord's relevant evidence included a registered mail evidence, a cleaning invoice, an intent to vacate agreement signed by the tenants at the beginning of the tenancy whereby the tenants agreed to cleaning charges of \$20 per hour if the rental unit was left in unsatisfactory condition, a carpet cleaning charge of \$75 if necessary, and a charge of \$20 per hour for repairs if there were any undue damages, a handwritten letter from the tenants notifying the landlord of their intent to vacate on March 25, 2013, and providing a forwarding address, a letter of response from the landlord, a condition inspection report, and photographs of the condition of the rental unit taken at the end of the tenancy.

In support of their application, the landlord testified that the tenants provided notice on March 8, 2013, that they were vacating the rental unit on March 25, 2013; in return the landlord informed the tenants that they would be responsible for rent for April and requested a move-out inspection.

The landlord described the condition of the rental unit as "filthy" and that a cleaning crew required at least 8 hours to properly clean. There additionally were repairs which were required to be made and the tenants did not have the carpets cleaned prior to vacating.

The landlord additionally stated that the parties had arranged for an inspection on March 25, 2013, but the tenants failed to attend, and the inspection was performed in the tenants' absence. The landlord said that they later discovered an unmarked key in their office mail slot, which was for this rental unit, indicating that the tenants had abandoned the rental unit.

The landlord said that the condition of the rental unit prevented the landlord from advertising the rental unit immediately, as at least two weeks of consistent repair and cleaning were necessary have the rental unit ready.

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, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

As the tenant failed to attend the hearing to rebut the landlord's evidence, after being duly served, I find the landlord provided sufficient evidence that the tenants left the rental unit in a state which required cleaning, removal of trash and personal property, and repair. I therefore find the landlord is entitled to a monetary award of \$365 for cleaning of \$210, repairs of \$80, and carpet cleaning of \$75.

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 the 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.

I therefore accept that the tenants provided insufficient notice to end this tenancy when the notice was issued on March 8 for a vacating date of March 25.

I also accept that the landlord was unable to advertise the rental unit immediately due to the condition of the rental unit and that the rental unit was advertised as soon as possible after remediation of the rental unit. As such, I find the landlord took reasonable measures to minimize their loss and I find they have proven their monetary claim of \$765 for loss of rent revenue.

I find the landlord is entitled to recover the filing fee of \$50.

Due to the above, I find the landlord has proven a total monetary claim of \$1180, comprised of cleaning for \$210, repairs for \$80, carpet cleaning for \$75, loss of revenue for April for \$765, and the filing fee of \$50.

Conclusion

The landlord has proven a total monetary claim of \$1180.

At the landlord's request, I allow the landlord to retain the tenants' security deposit of \$367.50 in partial satisfaction of their monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$812.50, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recoverable from the tenant.

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 and the respondent.

Dated: July 05, 2013

Residential Tenancy Branch