



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 695910 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlords – MND, MNR, MNSD, MNDC, FF

For the tenants – MNDC, MNSD, PSF, AS, RR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent and utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; a Monetary Order for the return of the security deposit; an Order for the landlord to provide services or faculties required by law; to allow a tenant to assign or sublet a rental unit; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application. The tenants withdrew their application for an Order for the landlord to provide services or faculties required by law and to allow a tenant to assign or sublet a rental unit as the tenants have since vacated the rental unit.

The tenants and four of the landlords, along with an advocate for the landlords, attended the conference call hearing, gave sworn testimony and were given the

opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

The original hearing was adjourned due to technical difficulties with the tenants' phone line. The hearing was reconvened on this date.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities, for damage to the unit, site or property, and for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenancy was created between the landlords and the tenants as co-tenants of this rental unit. A copy of the tenancy agreement has been provided in evidence and shows that this tenancy started on November 01, 2012. Rent for this unit was \$1,350.00 per month due on the first day of each month. The tenants paid a security deposit of \$675.00 on November 01, 2012.

The landlord (refers to landlords as a collective term) testify that the male tenant had moved out on December 08, 2012 but remained on the lease agreement which did not

expire until October 31, 2013. The female tenant moved out on February 28, 2013. The landlord testifies that the tenants failed to pay all the rent due for December and January leaving an unpaid balance for each month of \$575.00 a 10 Day Notice was served upon the tenants on January 21, 2013 in person to the female tenant. The tenants did not pay the outstanding rent and failed to pay all the rent due for February, leaving an unpaid balance of \$400.00. No rent was paid for March of \$1,350.00 and the unit could not be re-rented in March. The unit was later rented for April 01, 2013 after advertisements were placed on three internet sites and a For Rent sign was put out in front of the property.

The landlord testifies that they received a final utility bill which had not been paid by the tenants. The owners of the property had to pay this bill to the City for \$146.68. A copy of the letter from the City concerning the overdue amount has been provided in evidence.

The landlord testifies that the tenants failed to return the keys to the unit and the locks had to be rekeyed at a cost of \$190.00. The landlord has not provided a copy of the invoice for this work in evidence.

The landlord testifies that the tenants failed to leave the rental unit in a clean condition. A professional cleaning company were paid to come and clean the unit. This work took two days and the landlords seek to recover the amount of \$200.00 for this cleaning. No invoice has been provided in evidence.

The landlord testifies that the tenants failed to remove junk from the unit consisting of some furniture and a bag of wood. The landlord testifies that they had a landscaper remove these items to the dump and they seek to recover the amount of \$200.00 for this work. No invoice has been provided in evidence.

The landlords seek to keep the security deposit of \$675.00 to apply against their monetary claim. The landlords also seek to recover the \$50.00 filing fee.

The tenant HG testifies that her brother the other tenant DG moved out in December, 2012 and the landlord agreed the tenant could reduce the rent to \$775.00 for three months. The tenant HN testifies then the landlords kept saying that the other tenant DG owed rent. The tenant HN testifies that the reason she moved out at the end of February was because the landlord posted a For Rent sign after the landlord had agreed the tenant could stay until April 01, 2013. The tenant testifies that she panicked when she saw adverts for the house on an internet site so moved out on March 01, 2013.

The tenant HN testifies that the account for the utilities went back before the tenants moved in. The tenant testifies that they paid all the bills from the City and registered the account with the City when they moved in. The tenant testifies that this bill could be an outstanding amount.

The tenant testifies that they did return the keys to one of the landlord's daughter LZ as that person was the person the tenant dealt with during the tenancy. The keys were returned on February 28, 2013.

The tenant testifies that she cleaned every bit of the house except for one small strip behind the counter. The tenant testifies that when they moved into the unit it was very dirty and the tenants had to clean the unit at that time too. The tenant disputes that the landlords needed to clean the house again and states everyone has different standards.

The tenant testifies that she confirmed with LZ about what was being left in the unit. The tenant testifies that the furniture left behind was not the tenants but was left in the house by the previous owner. This included deep freezers and wood. The only item left by the tenants was a small bag of wood and this was left for the landlords use.

The landlord testifies that that they are not aware that the keys were left with LZ and at the reconvened hearing I again asked the landlord if the landlords had checked with LZ if the keys had been returned. The landlord testifies that they had not checked.

The landlord testifies that they had purchased this home as a rental unit. The tenants met with the previous owner and agreed with the previous owner that he would leave some furniture for the tenants. The landlord testifies that they did not want the furniture and if the tenants had not wanted it the previous owner would have been asked to remove it.

The tenant agrees that she had an agreement with the previous owner to keep some furniture. The tenant testifies that everything was removed except one piece of furniture in the basement and LZ had agreed to throw that out.

The landlord denies agreeing to reduce the rent when the male tenant moved out. The landlord testifies that the tenant was asked many times for the rent of \$1350.00.

DG testifies that he had signed the lease before viewing the unit but was happy to move into the unit. DG testifies that while he was living in the unit he was cooking on the stove with a frying pan and hot oil and walked away from the pan leaving it unattended going down into the basement. Meanwhile the pan started to smoke and the smoke woke up the other tenant and her daughter. The other tenant started screaming to put the fire out. It was just smoke but the tenant testifies that he had lost two brothers to a fire and so decided to move out after someone offered him another rental unit. The tenant testifies that had this unit had smoke alarms it would have alerted the tenants to the smoke. The tenants had informed the landlords that there were no smoke alarms and the landlord provided one carbon monoxide detector. The tenant testifies that a second fire/smoke occurred while the tenant was again cooking with a frying pan and left the pan unattended for the second time.

The tenant HN testifies that a third fire occurred when grease underneath the burner caught fire while HN was cooking on the stove.

The tenant DG testifies that the unit came with a washer dryer however these broke down and the landlord was informed. The tenant testifies that he had to wait in all day for the new ones to be delivered and installed and seeks to recover \$85.00 for his time.

The tenant DG testifies that the unit was supposed to be equipped with a snow blower however the landlord did not provide one and the tenant had to clear the snow from the sidewalk by hand.

The tenant DG testifies that as he had to move from the unit because of the potential of a fire occurring. Due to this the tenant testifies that he seeks the amount of \$30.00 for the power and sewage hook up; \$200.00 for the costs to move into the unit; \$200.00 for the costs to move out of the unit; \$900.00 for the rent paid by DG for November; Another \$460.00 for rent for November; \$266.32 for a gas bill and \$300.00 for DG share of the security deposit. HN testifies that she seeks to recover the security deposit of \$675.00; a month's rent for February of \$775.00 because the landlords asked HN to move out.

The tenants seek a rent reduction as the landlord did not provide a smoke alarm in the unit and failed to provide a snow blower.

The landlords dispute the tenants' claims. The landlord testifies that they were unaware that there was not a smoke detector upstairs. The tenant DG phoned the landlord in November, 2012 and informed the landlord that there was no carbon monoxide detector and so the landlords purchased one which was a multi function detector including the detection of smoke. This detector was installed downstairs however the tenants did not inform the landlords that there was no smoke detector upstairs.

The landlord testifies that whenever the tenants informed the landlords of a problem the landlords responded immediately to rectify the problem. When the washer dryer broke down the tenant informed the landlord at 7.00 a.m. and by 2.00.p.m. a new one had been delivered and installed.

The landlord questions the tenants DG testimony about not having seen the unit prior to signing the lease. The landlord refers to e-mail correspondence provided in evidence which states that DG had viewed the unit and was very pleased with it prior to signing the lease.

The landlord testifies that they were not made aware that there had been any fires in the unit. The landlord testifies that they have had a new tenant in the unit since April 01, 2013 and there have been no issues with fires.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent; I refer the parties to section 26 of the Act which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I also refer the parties to the Residential Tenancy Policy Guidelines #13 which discusses the responsibility of co-tenants and states:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

Having reviewed the tenancy agreement I find this was a fixed term agreement which was not due to expire until October 31, 2013. The tenants failed to pay the full amount of rent owed for December, January and February and have been unable to show that

there was an agreement between the tenant HN and the landlords to pay a reduced rent for three months. I therefore find the landlords are entitled to recover this rent to an amount of **\$1,550.00** from the tenants.

Furthermore as this was a fixed term tenancy the tenants could not legally end the tenancy before the end of the fixed term. Therefore the landlords are entitled to recover any loss of rental income up to the date that the unit was re-rented. As the unit was re-rented for April 01, 2013 I find the landlords are entitled to recover a loss of rent for March to an amount of **\$1,350.00**. The tenant argues that the landlord advertised the unit prior to the tenant vacating. A landlord must mitigate any loss of rent by attempting to re-rent a unit as soon as possible after a Notice to End Tenancy has been served. The landlords were therefore within their rights to try to find new tenants to rent the unit after serving the tenant with a 10 Day Notice to End Tenancy.

With regard to the landlords claim for unpaid utilities; I am satisfied from the evidence provided that the tenants failed to pay a utility bill for utilities used during the tenancy. Therefore the landlords are entitled to recover the amount of **\$146.68** from the tenants.

With regard to the landlords claim for damage; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlords did not confirm with one of the other landlords LZ that the keys had been returned. The landlords have provided no evidence of the actual cost to re-key the locks. The landlords have failed to provide any corroborating evidence to show that the unit was left unclean by the tenants or the actual cost to clean the unit and the landlords have provided no evidence such as an invoice to support their claim for the removal of furniture and junk. Consequently in regard to the landlords claim for damages the burden of proof has not been met and this section of the landlords claim is denied.

I find the landlords are entitled to keep the tenants security deposit and this amount of **\$675.00** has been offset against the unpaid rent pursuant to s. 38(4) (b) of the *Act*.

As the landlords have been partially successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants' pursuant o s. 72(1) of the *Act*.

A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent	\$1,550.00
Loss of rent for March	\$1,350.00
Unpaid utilities	\$146.68
Subtotal	\$3,046.68
Less security deposit	(-\$675.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$2,421.68

With regard to the tenants claim for money owed or compensation for damage or loss; the tenants have stated that the male tenant vacated the unit because the landlords had not provided a smoke detector and three fires occurred. This alone would not be sufficient for a tenant to vacate a rental unit. The tenants are required to put into writing any repairs required at the rental unit and should have requested in writing that a smoke detector was required as a landlord may be unaware of this unless the tenants notify them. I agree the tenants verbally notified the landlords that a smoke detector was needed and the landlord purchased a multi function detector. If a further detector was still required the tenants should have requested this in writing. If the landlords then failed to provide one the tenants would have been entitled to file an application against the landlords to obtain one. I further find that the tenants were responsible for the smoke and fire as the male tenant left a frying pan with hot oil unattended on the stove and the female tenant started another fire when grease caught fire under the stove burner. Therefore the tenants must bear a large part of the responsibility for any smoke or fires as frying pans with hot oil in should never be left unattended and grease should be regularly cleaned from underneath the stove burners.

Consequently the tenants claim to recover power and sewage hook up fees, moving costs, rent, and a gas bill are all denied. The tenants claim for a rent reduction for a missing smoke alarm is also denied.

With regard to the tenants claim to recover \$85.00 when the new washer/dryer were delivered; the tenants have provided no evidence to show that the landlords required the tenants to stay in all day for this delivery. The landlord has testified that the new appliances were delivered at 2.00 p.m. and I have no evidence to show that the tenant lost any wages for this day. This section of the tenants claim is therefore denied.

With regard to the tenants claim to recover \$50.00 for clearing snow from the sidewalk; I have no evidence before me that the parties had an agreement that a snow blower would be provided for the tenants use at the start of the tenancy. The agreement does however state that the tenants are responsible for the removal of snow from the

sidewalk. Consequently this section of the tenants claim is denied. Furthermore I deny the tenants claim for a rent reduction as there is no proof that the landlords agreed to provide a snow blower and failed to do so.

With regard to the tenants claim to recover rent paid for February of \$775.00. The tenant was served with a 10 Day Notice to End Tenancy on January 21, 2013. This had an effective date of January 31, 2013. The tenant did not dispute the Notice and was therefore conclusively presumed to have accepted the end of the tenancy and should have moved out on the effective date of the Notice. The tenant failed to move out until the end of February and would not be entitled to recover any rent paid for February. This section of the tenants claim is therefore denied.

With regard to the tenants claim to recover the security deposit; as the security deposit has been awarded to the landlord this section of the tenants claim is denied. As the tenants have been unsuccessful with their claim the tenants must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,421.68**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords claim for damages is dismissed without leave to reapply.

The tenants' application is dismissed in its entirety 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*.

Dated: August 22, 2013

Residential Tenancy Branch

