



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 12, 2013, by the Landlords to obtain a Monetary Order for: unpaid rent or utilities; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons, 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.

The Landlords submitted documentary evidence which included, among other things, copies of: photographs; their written submission; Canada Post receipts; bank statements; receipts for materials; real estate listing documents; the tenancy agreement; and a move in condition inspection report form.

The Tenants submitted documentary evidence which included, among other things, copies of: Their written submission; witness statements; receipts for cleaning; photos of the rental unit; and an audio recording on a C.D.

The Landlords objected to the Tenants relying on an audio recording taken without their knowledge or consent. Furthermore, they stated that they were not able to open the file. I find this recording to be unreliable because there is no way to determine if the file has been edited. I also find that the Tenant(s) could have manipulated the conversation in an attempt to elicit responses that otherwise would not have been made. Consequently, I find that this recording (and any written transcripts of it) should not be admitted into evidence because they are unreliable. Instead, the parties were each given an opportunity to provide their own oral evidence of what occurred during the events in question and to cross-examine the other party on their oral evidence.

Issue(s) to be Decided

1. Did the tenancy end in accordance with the Act?
2. When did the tenancy end?
3. Are the Landlords entitled to a monetary award for damages, unpaid rent, and loss of rent?

Background and Evidence

Both parties testified and confirmed that they entered into a written fixed term tenancy agreement that began on January 31, 2013 and was set to expire on January 31, 2014. Rent was payable on the first of each month in the amount of \$1,150.00 and on January 29, 2013, the Tenants paid \$575.00 as the security deposit. The parties attended a move in inspection and signed the condition inspection report form on January 29, 2013.

At the outset of this proceeding the Tenant accepted responsibility for \$287.50 worth of damages which included costs to repair: broken tiles on or by the fireplace; scratches on the master bedroom hardwood floor; scuffs on the hallway walls; a small stain on the main bathroom floor; and replacement cost of two bedroom blinds. The Tenants' written submission contests the values claimed by the Landlords and argued that some of the damage was present at the outset of the tenancy; therefore, they should get half of their security deposit returned.

The Landlords argued that the cost to repair the damages was more than the security deposit of \$575.00 but they were only seeking to retain the deposit in full satisfaction of the damages. They have not yet received the receipts from the contractors that performed the repairs however they did supply receipts that prove they purchased materials for the repairs in excess of \$500.00. They have owned this house for approximately eight years and they repainted the unit in January 2013.

The Tenant testified that they did not provide the Landlord's with written notice to end their tenancy and they did not pay July 1, 2013, rent. They occupied the rental unit until July 6, 2013 and left the keys inside the unit.

The Landlords submitted that they were out of town when the Tenants vacated the unit and that they were called by a neighbour on July 7, 2013 to say the Tenants were moving out. They were not able to confirm this with the Tenants until July 8, 2013. They are seeking compensation for July and August 2013 rent because they had not rented the unit. The first time they advertised the unit was August 15, 2013. They delayed in advertising because they were too busy to complete the clean up and renovations beforehand. They now have a verbal agreement to re-rent the unit as of September 1, 2013, but nothing has been finalized.

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;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 44 (1) (d) of the Act stipulates that a tenancy ends if the tenant vacates or abandons the rental unit.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is: not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the foregoing, the Tenants would not have been able to end their fixed term tenancy agreement, in accordance with the Act, prior to January 31, 2014. Therefore, I find this tenancy ended on July 8, 2013, in breach of Section 45 (2) of the Act, and pursuant to section 44 of the Act.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement. The undisputed evidence supported that the Tenants occupied the rental unit until July 6 or 7th, 2013, and they did not pay the rent that was due on July 1, 2013. It is unreasonable to think that the Landlords would be able to re-rent the unit for July without proper notice. Accordingly, I find the Landlords are entitled to monetary compensation for unpaid rent for the full month of July 2013 in the amount of **\$1,150.00**.

The Landlords did not advertise the rental unit August 15, 2013, over a month after the date they found out the Tenants had vacated the unit. They have since found new renters by word of mouth, for September 1, 2013. I do not accept their argument that they could not advertise the unit sooner due to the condition of the rental unit; rather, I find they did not do what was reasonable to mitigate their loss by advertising the unit as soon as possible. Therefore, I dismiss their claim for loss of rent for August 2013, without leave to reapply. Upon review of the Landlord's claim I find their claim for September 2013 loss of rent to be premature as they have not suffered this loss as of yet.

The written submissions indicate that the Tenants requested an inspection of the property while they were still residing in the unit. I find that such an inspection does not constitute a move out inspection as the Tenants still had possessions inside the unit and they were still living in the unit. Accordingly, I find that the Tenants abandoned the unit, without proper notice, and have therefore extinguished their right for the return of their security deposit, pursuant to section 35 of the Act. I accept the Landlord's submission that their expenses to repair and clean the unit exceeded the security deposit amount but that they were only seeking to retain the deposit. Therefore, I award the Landlords monetary compensation for damages in the amount of **\$575.00**.

The Landlords have been successful with their 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 July 1, 2013 Rent	\$1,150.00
Damages	575.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,775.00
LESS: Security Deposit \$575.00 + Interest 0.00	<u>-575.00</u>
Offset amount due to the Landlords	<u>\$1,200.00</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$1,200.00**. 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: August 20, 2013

Residential Tenancy Branch

