



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Preliminary Issues

At the beginning of the hearing the Landlords confirmed receipt of a C.D. the contained an audio recording and stated they did not receive a flash drive from the Tenants. The Landlords objected to the Tenants relying on audio recordings because they were taken without their knowledge or consent. The Landlords also noted that the written transcript provided by the Tenants does not include the full conversation and is missing information; therefore they disputed these recordings being accepted as evidence.

The Tenants confirmed they did not have the Landlords' permission to make the recordings and did not provide a complete transcript of the conversations. They argued they had the right to make the audio records because they were made in their own residence.

I find the audio recordings submitted by the Tenants to be unreliable because there is no way to determine if they have been edited. I also find that Tenants could have manipulated the conversations in an attempt to elicit responses that otherwise would not have been made. Consequently, I find that these recordings (and written transcripts of them) 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 evidence.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 22, 2013, by the Landlords to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; unpaid rent and utilities; to keep the security deposit in partial satisfaction of their claim; 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 Landlords be granted a Monetary Order?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: a 10 Day Notice to end tenancy issued May 2, 2013; proof that they advertises the unit; and utility bills.

The Tenants submitted an eleven page written statement.

The parties confirmed they entered into a verbal month to month tenancy for the monthly rent of \$850.00. On October 25, 2012, the Tenants paid \$425.00 as the security deposit and the first payment of rent was on November 12, 2012, in the amount of \$538.27 for November 2012.

The Tenants testified that they do not dispute the claim of \$ 232.15 for utilities and stated they were of the impression that they had previously agreed for the Landlords to withhold this amount from their security deposit. The Tenants confirmed receipt of the 10 Day Notice on May 3, 2013, when it was personally served by the male Landlord. They acknowledged that they did not pay rent for April or May 2013 and argued that they were of the impression they were issued a verbal two month notice and were entitled to one month's free rent. They vacated the property on May 5, 2013.

The Landlords confirmed regaining possession on May 5, 2013, and argued that they never issued the Tenants a 2 Month eviction notice. There were concerns about the Tenants having a pet but at no time did they tell the Tenants they were taking over the unit for their own use.

The Landlords stated that they began advertising the rental unit as of May 5, 2013, for \$1,000.00 and were able to re-rent the unit as of July 8, 2013 when they agreed to rent the unit to a disabled person for \$4,000.00 per month. They are seeking to recover April and May unpaid rent and loss of rent for June 2013.

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.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on May 3, 2013, and vacated the unit, without paying the outstanding rent, on May 5, 2013.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with their tenancy agreement.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenants argued that they did not pay rent as they were entitled to compensation for being issued a 2 Month Notice to end tenancy. Accordingly, the Tenants have the burden to prove they were issued a 2 Month Notice. The evidence before me was disputed verbal testimony where the Landlords deny issuing a 2 Month Notice. Therefore, I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof and find that the Tenant's breached section 26 of the Act by failing to pay their rent.

Based on the foregoing, I find the Landlords are entitled to compensation for April and May 2013 rent, in the amount of **\$1,700.00** (2 x \$850.00), in accordance with Section 67 of the Act.

The Landlords sought compensation for loss of June 2013 revenue of \$850.00. Landlords confirmed that when advertising the rental unit they increased the rent amount they were seeking to \$1,000.00 per month and subsequently re-rented the unit two months later for almost 425% more at \$4,000.00 per month.

When considering the current vacancy rate and average rents being charged, I find the Landlords have not done what was reasonable to mitigate their loss and re-rent the unit as soon as possible. I make this finding in part because they made no attempt to re-rent the unit at the same monthly amount and instead increased the rental amount they were seeking. Accordingly, I find they have not met the test for damage or loss as listed above, and I dismiss their claim for loss of June 2013 rent, without leave to reapply.

The Tenants did not dispute the Landlord's claim for utilities. Accordingly, I award the Landlords utility costs of **\$232.15**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Monetary Order – I find that the Landlords are 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 Rent April & May 2013	\$1,700.00
Unpaid Utilities	232.15
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,982.15
LESS: Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount due to the Landlord	<u>\$1,557.15</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$1,557.15**. 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 26, 2013

Residential Tenancy Branch

