



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OPC

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenants' security deposit, an order of possession for the rental unit due to alleged cause, and for recovery of the filing fee.

At the original hearing, the two landlords and the female tenant appeared; the tenant stated that she had not received the landlords' documentary evidence. As a result, the original hearing was adjourned to allow the tenants to receive the landlords' documentary evidence and to provide a response thereto.

Notices of the hearing were sent to both parties; however, at the adjourned hearing, only landlord JP appeared. I note that the tenants had filed written responses to the landlords' application for dispute resolution, but no further evidence since the original hearing.

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

I have reviewed all oral and documentary 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 the landlords applied for an order of possession for the rental unit, the tenancy ended on June 30, 2013 when the tenants vacated the rental unit. I therefore have excluded the landlords' request for such an order of possession for the rental unit and the hearing proceeded on the landlords' application for monetary compensation.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation, authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on February 2, 2011, ended on June 30, 2013, beginning monthly rent was \$1200, monthly rent at the conclusion of the tenancy was \$1250, and the tenants paid a security deposit of \$600 on or about February 2, 2011.

The landlords' monetary claim is in the amount of \$1501.70, which the landlord said was for loss of revenue of \$625 for the first half of July 2013, \$226.70 for strata fines, \$600 for the tenants' security deposit, and the filing fee of \$50.

In explanation, the landlord submitted that the tenants left the rental unit in an unclean and damaged state at the end of the tenancy, which prevented the landlords from being able to rent the rental unit beginning July 1. In particular, the landlord said that the carpet was damaged due to the tenants' large dog urinating and defecating on the carpet, the rental unit itself was not clean, and the carpet was not vacuumed.

Due to the unclean and damaged state of the rental unit, the landlords were unable to have new tenants move in until July 15, 2013, according to the landlord, resulting in a loss of rent revenue for July 1-15.

As to the strata fines, the landlord said that they have incurred the amount of \$200 in a fine and \$26.70 in late fees and interest, due to tenants leaving garbage on the premises, despite receiving the warning letters.

In response to my question, the landlord said that the tenants had not signed a Form K acknowledging strata bylaw responsibility.

As to the remaining \$600, the landlords included this amount with their total monetary claim, although they continue to retain this amount.

The landlord's relevant documentary evidence included the strata warning letters, the written tenancy agreement, email communication with the tenants, photos of the rental unit, and quotations for carpet replacement.

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 landlords 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.

Loss of rent revenue-

In the case before me, I accept the landlords' undisputed evidence that the tenants failed to leave the rental unit reasonably clean, as is their obligation under section 37(2) of the Act, causing the landlords to suffer a loss of rent revenue for July 1-15, 2013 due to the state of the rental unit. I therefore find they are entitled to a monetary award in the amount of \$625 for a loss of rent revenue.

Strata fines-

In this case the landlords failed to have the tenants sign a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them.

Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As the tenants have not signed the Form K, which becomes part of the tenancy agreement, I find that the landlords have failed to prove that the tenants have violated the tenancy agreement or the Act, and I dismiss their claim for \$226.70.

Security deposit-

The landlords continue to retain the tenants' security deposit and I find that the landlords made an error in seeking an additional \$600 as part of their monetary claim.

I find the landlords are entitled to recover the filing fee of \$50.

Due to the above, I find the landlords have proven a total monetary claim of \$675, comprised of rent revenue for July 1-15, 2013, in the amount of \$625 and the filing fee of \$50.

Conclusion

The landlords have proven a total monetary claim of \$675.

At the landlords' request, I allow the landlord to retain the tenants' security deposit of \$600 in partial satisfaction of their monetary award.

I therefore grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$75, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay, 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 enforcement may be recoverable from the tenants.

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 applicants and the respondents.

Dated: September 03, 2013

Residential Tenancy Branch

