



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This was a hearing with respect to the landlords' application for a monetary order and an order for possession. The hearing was conducted by conference call. The landlords and the tenants called in and participated in the hearing. Since this application was filed the tenants have moved out of the rental unit. An order for possession is no longer required and the landlords' application for an order for possession is therefore dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Mission. The tenancy began on January 1, 2013. The tenancy agreement provided for monthly rent of \$900.00. The agreement provided that \$900.00 would be the rent for the first three months of the tenancy and after March 31st the rent was to be mutually agreed upon. According to the landlord the rent of \$900.00 was much less than the market rent because the tenants were supposed to perform renovations and caretaking work to the rental property and the rent was reduced accordingly..

The tenants paid a \$500.00 security deposit on December 20, 2013. The tenants had four pets. The agreement did not state an amount for a pet deposit, but it contained the following hand written notation:

***NOTE:** The landlord agrees to forget about this damage deposit in return for repairs/maintenance work and improvements to house as previously discussed.

On July 24, 2013 there was a dispute resolution hearing concerning the tenants' application to dispute an additional rent increase that they claimed was an illegal rent increase. The parties arrived at a settlement agreement that was recorded by the arbitrator in the form of a decision. One of the settlement terms provided that:

1. Despite any previous verbal or mutually signed agreement of the parties, both parties agree the monthly rent payable **as of August 01, 2013** will be **\$1200.00**.

A further term stated as follows:

1. Despite any previous verbal or mutually signed agreement of the parties, both parties agree the landlord **may keep all rent paid by the tenant to date**.

The tenants did not pay the sum of \$1,200.00 due for August. The tenants contended that they had overpaid rent in the amount of \$780.00 and that they were entitled to deduct the said sum from the amount of \$1,200.00 that was due for August rent. The tenants applied for a correction or clarification of the July 24th settlement decision, but their request was denied by the arbitrator in a decision dated August 20, 2013. He stated that there were no inadvertent omissions requiring correction and the matter raised was not the subject of an agreement by the parties.

When the tenants failed to pay the full rent for August the landlords served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The tenants moved out of the rental property on September 9, 2013.

In this application the landlords have claimed payment of the following amounts:

• Outstanding rent for August:	\$780.00
• Rent for September:	\$1,200.00
• Filing fees	\$50.00
• Late payment surcharge (bank)	\$25.00
• Daily surcharge 18 day X \$3.00	\$54.00
• Registered letters	\$22.09
• BC Hydro Arrears and current charges	\$803.99

Total: \$2,935.08

The tenants continue to take the position that the sum of \$780.00 that they submit was a rent overpayment should be deducted from August rent. The tenants agree that they owe the amount claimed by the landlords for Hydro charges, but they said that they

moved out pursuant to the landlords' Notice to End Tenancy and they should only be responsible for payment of 9 days rent for September. The tenants disagreed with the landlords' claims for late fees and registered mail charges.

The tenants alleged that the landlord falsified a hand written provision on the tenancy agreement and y complained that the landlords breached the settlement agreement and harassed the tenants and disturbed their quiet enjoyment of the rental property.

The tenants submitted that there should be a set off against any award to the landlords of the \$500.00 security deposit and a further \$500.00 on account of a credit for a pet deposit because the tenants performed work in lieu of payment of a pet deposit. The landlords rejected this submission. The landlord said that the tenants received a substantial rent reduction because of renovation work and repairs they were supposed to perform and the settlement agreement ended the tenants' obligations to perform any repairs, improvements or maintenance to the rental property.

The landlords testified that they have not re-rented the house for September, in large part because the tenants left the house in such bad condition that it needs extensive work and cleaning before it can be rented again.

Analysis

The settlement agreement did not excuse the tenants from paying the full amount of rent for August. They sought to correct or clarify the settlement decision, but the arbitrator determined that no correction was necessary. I may not alter that decision and I find that the landlord is entitled to an award for the unpaid rent for August in the amount of \$780.00. I find as well that the landlord is entitled to recover the full amount of the rent for September. The tenants did not give proper notice. They occupied the unit for 9 days and the landlord was not able to rent the unit for any part of the month.

The tenants have acknowledged responsibility for the Hydro account in the amount claimed by the landlords and I award the landlords the sum of \$803.99 as claimed.

I do not allow the landlords' claims for late fees because there was no contractual provision authorizing a claim for late fees; I note as well, that the landlords have also claimed amounts that exceed the maximum of \$25.00 permitted by regulation if there is an appropriate contractual provision. The landlords are not entitled to recover mail charges, the only cost that is recoverable under the *Residential Tenancy Act* is the filing fee for the application; The landlords' claim for registered mail charges is therefore denied.

I have allowed the landlords' claim in the amount of \$2,783.99. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$2,833.99. I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of this award. I do not accept the tenants' argument that they should be credited with a further \$500.00 as a pet damage deposit because no amount was specified as a pet deposit and the agreement said only that the landlord would "forget about" the deposit, not that the tenants would receive credit in a specified amount. I accept the landlord's testimony that the tenants were to receive a rent reduction for work and improvements, and by the July 24th settlement agreement, the tenants' obligations to perform work were ended and the rent was fixed at \$1,200.00 per month. After setting off the \$500.00 security deposit to be retained by the landlords, the landlords are entitled to a monetary award in the amount of \$2,333.99.

Conclusion

I grant the landlords an order under section 67 in the amount of \$2,333.99. This order may be registered in the 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: October 02, 2013

Residential Tenancy Branch

