



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0840625 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNDC FF

Preliminary Issues

While checking the participants into the teleconference hearing the male Tenant provided his correct legal name. I informed the Tenant that I would be amending the application to show his corrected name, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 23, 2013, by the Landlords to obtain a Monetary Order for: unpaid rent or utilities; money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant 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

Is the Landlord entitled to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on June 1, 2011 and switched to a month to month tenancy after twelve months. Rent began at \$1,050.00 and was later increased to \$1,085.00 and was payable on the first

of each month. On or before June 1, 2011 the Tenants paid \$525.00 as the security deposit and \$525.00 as the pet deposit. The pet deposit was returned to the Tenants in 2012 when they no longer had a pet. The Landlord is currently holding the security deposit. No condition inspection report forms were completed at move in or move out.

The undisputed testimony confirmed that on July 22, 2013 the Tenants sent the Landlords a text message advising that they would be ending their tenancy effective July 31, 2013. The Tenants had vacated the property by July 28, 2013.

The Landlords have filed seeking payment for July 2013 rent of \$1,085.00 plus loss of rent for August of \$542.50 for half the month. The Landlords indicated that they were able to re-rent the unit effective August 15, 2013, therefore they wish to reduce their claim by half of August rent.

The Tenants confirmed that rent was not paid for July 2013; however, they attempted to pay rent but they alleged their bank cheque was stolen. An investigation was conducted by the Bank who confirmed the stolen cheque was never cashed and the money was returned to the Tenants.

The Tenants argued that they should not have to pay for loss of rent for August because they felt they had no choice but to move for the safety of their two year old child. They indicated that there were break-ins and vandalism going on inside the building for up to four months before they decided to move. They did not seek help from dispute resolution or any other source because they just thought they could communicate their concerns with the Landlords. When things got too bad they decided to move to protect their child.

In closing, the Landlords wanted to clarify that the Tenants had a pattern of not paying rent on time for various reasons. They felt this last time was no different than the previous patterns they had established for not paying rent.

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.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

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

The undisputed testimony confirmed that the Tenants continued to occupy the rental unit until the end of July 2013 and did not pay their rent. Notwithstanding the Tenants' argument that their rent payment was initially stolen, the fact remains that they did not pay July rent. Accordingly, I find the Tenants breached section 26 of the Act, by not paying rent in accordance with their tenancy agreement. Therefore, I award the Landlord a monetary Order for July 2013 rent of **\$1,085.00**.

Section 45 of the Act stipulates that a tenant may end a periodic tenancy by providing the Landlord one month written notice to end tenancy.

In this case the Tenants provided their written notice on July 30, 2013. Therefore, this tenancy would not end in accordance with the Act until August 31, 2013. The Tenants subsequently breached the Act by vacating the property and ending the tenancy July 28, 2013.

I do not accept the Tenants' argument that they could not provide proper notice to end their tenancy or that they could not seek assistance to resolve their issues of security because by their own testimony they admitted that break-ins and vandalism was going on inside the building for four months prior to them leaving.

Based on the above, I find the Tenants' breach of section 45 of the Act caused the Landlords to suffer a loss of half of August rent because they were not able to re-rent the unit until August 15, 2013. Accordingly, I award the Landlords loss of rent for August 2013 in the amount of **\$542.50**.

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 2013 Rent	\$1,085.00
Loss of Rent August 1 – 14, 2013	542.50
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,677.50
LESS: Security Deposit \$525.00 + Interest 0.00	<u>-525.00</u>
Offset amount due to the Landlord	<u>\$1,152.50</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$1,152.50**. 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: October 29, 2013

Residential Tenancy Branch

