



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, DRI, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their deposits pursuant to section 38; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants agreed that the landlord served them with the 10 Day Notice by handing it to Tenant DS on August 3, 2013. The tenants confirmed that they both received a copy of the landlord's dispute resolution hearing package by personal service on September 14, 2013. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on September 24, 2013. I am satisfied that the parties served the above documents to one another and that both parties were prepared to speak to both of their applications at the hearing.

Preliminary Matters

At the commencement of the hearing, I checked with the tenants to confirm the correct name of Tenant YM. As the landlord had reversed this tenant's given name and surname on his application, I revised her name to the spelling and format identified above and as shown on the tenants' application.

Tenant YM testified that she vacated the rental unit on October 8, 2013. Tenant DS testified that she was expecting to also vacate the rental unit later on the day of the hearing, provided her rental truck was confirmed. In any event, Tenant DS testified that she would be vacating the rental unit within the next day or two. As such, the tenants withdrew their application to cancel the landlord's 10 Day Notice. This portion of the tenants' application is withdrawn.

At the beginning of the hearing, I also asked for a clarification of the tenants' application to dispute an additional rent increase. The tenants testified that the landlord had arbitrarily attempted to increase their monthly rent by \$50.00 for utilities, which they maintained were to have been included in their \$1,350.00 in monthly rent. The landlord testified that utilities were not included in the base rent and that the tenants were using an unusual amount of water. For that reason, he had identified \$50.00 as owing for water as of August 3, 2013 in his 10 Day Notice.

In the absence of a copy of a written tenancy agreement submitted into evidence by either party, I advised the parties of my finding that the correct monthly rent was set at \$1,350.00. This is the amount identified in both of their applications for dispute resolution. I also advised the parties of my finding that the *Act* requires a landlord to create a written Residential Tenancy Agreement. When a landlord provides no written evidence that he has created a written Agreement, signed by both parties, any dispute regarding the terms of the agreement between the parties is interpreted in favour of the tenants. For this reason, and without any proof before me that a signed written Agreement is in place for this tenancy, I advised the parties of my finding that water was included in the tenants' \$1,350.00 monthly rent. Since this tenancy is ending and the landlord is not seeking a monetary award for unpaid utilities, the tenants withdrew their application to dispute an additional rent increase. The tenants' application to dispute an additional rent increase is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Are either of the parties entitled to a monetary award for losses arising out of this tenancy? Which of the parties are entitled

to the tenants' deposits? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on August 1, 2013. There is no written evidence before me that the landlord has a signed Residential Tenancy Agreement for this tenancy. The tenants denied having signed any such Agreement. As noted above, monthly rent is set at \$1,350.00, which I find to have included water and other utilities. The landlord continues to hold the tenants' \$675.00 security deposit and \$675.00 pet damage deposit, both paid on July 30, 2013. No joint move-in condition inspection occurred when the tenancy began. Tenant DS gave sworn oral testimony and written evidence that the landlord allowed them access to the rental unit by telling them where they could find the key to the rental unit which he had hidden on the property.

Both parties agreed that the tenants paid their August 2013 rent in full. After gaining access to the property, the tenants testified that they repeatedly asked the landlord to clean up the premises, which still contained garbage left by the previous tenants. They maintained that they discovered that the landlord had not been paying his taxes to the municipality so municipal services including garbage pick-up had been withdrawn by the municipality. They maintained that the landlord told them that they should throw their garbage in the trees on the property. They said that this area was already littered with garbage from the previous tenants. They also complained that the landlord refused to repair items such as the toilet, flooding and mould in the rental unit. They said that once they moved in, the landlord failed to honour his prior commitment to repair these items. They submitted photographic evidence of the poor condition of the rental unit. Both tenants said that they wanted to leave the rental unit shortly after they moved in when they discovered the condition of the rental unit. The tenants confirmed that they have not paid rent for September or October 2013. They testified that they encountered a loss in the value of the tenancy because the landlord had not provided the facilities and services they expected to receive when they entered into this tenancy agreement. However, neither tenant provided any details as to how they arrived at the \$2,700.00 figure they were claiming in monetary losses arising out of this tenancy. Tenant DS repeatedly stated that her primary interest was in obtaining the deposits paid for this tenancy.

The landlord testified that the tenants have caused the mess at this rental property. He claimed that they purposefully plugged a toilet so that it would flood. He maintained that this enabled the tenants to take photographs claiming that he was responsible for a lack of repairs. He said that garbage pickup resumed a few weeks after this tenancy began and that the tenants refused to take their garbage to the street where the municipal

garbage pickup is available. The landlord said that the tenants have caused considerable damage to his property and he wanted an Order of Possession in case they did not vacate the premises.

The landlord's application for a monetary award of \$2,700.00 was for unpaid rent of \$1,350.00 for each of September and October 2013.

Analysis

I have reviewed the sworn testimony of the parties and the tenants' written and photographic evidence, the only written evidence provided by either party for this hearing.

As noted above, one of the tenants has already vacated the rental unit and the other plans to vacate the rental unit shortly. The tenants withdrew their application to cancel the 10 Day Notice as they agree that rent for September and October has not been paid and that they are no longer contesting the landlord's 10 Day Notice. In the event that the tenants do not yield vacant possession of the rental unit to the landlord as planned, I advised the parties at the hearing that I would be granting a 2-day Order of Possession to the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2013, the tenants would have needed to provide their notice to end this tenancy before September 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing. As this did not occur, I find that the tenants did not comply with the provisions of section 45(1) of the *Act* and the tenants are responsible for unpaid rent for September and October 2013. There is undisputed evidence that the tenants have not paid any rent to the landlord for September and October 2013. As such, I find that the terms of their tenancy agreement entitled the landlord to a monetary award of \$1,350.00 for both of these months.

I have also considered the tenants' claim that they have not received full value for their tenancy due to the poor condition of the premises. In this regard, the landlord claimed that the tenants are responsible for the present condition of the rental unit. However, other than his sworn testimony, he provided little evidence to substantiate this assertion. The landlord failed to follow the requirements of section 38 of the *Act* when he did not conduct a joint move-in condition inspection with the tenants at the beginning of this

tenancy and record the results of that inspection in a signed condition inspection report copied to the tenants. In the absence of a condition inspection report or any other evidence other than the landlord's sworn testimony, I find on a balance of probabilities that the tenants have not received full value for the services and facilities that they were expecting to receive when they rented these premises from the landlord.

In considering the amount of the reduction in the value of this tenancy, I by no means agree with the tenants' claim for a monetary loss of \$2,700.00. A monetary award of this amount would allow them to forego paying any rent for September or October due to the landlord's failure to properly maintain the premises. At the hearing, both tenants recognized that they did enter into a tenancy agreement with the landlord to rent these premises and have not issued any written notice to end their tenancy. During the hearing, neither tenant asked for an elimination of all of the rent due to the landlord. Rather, I understand their request to be for a reduction in their monthly rent to reflect the loss in value of their tenancy due to the landlord's failure to look after these premises.

Based on a balance of probabilities, I find that the tenants are entitled to a reduction in their monthly rent in the amount of \$100.00 for each of the three months of their tenancy due to the landlord's failure to provide them with the services and facilities they were anticipating receiving when they agreed to this tenancy.

I allow the landlord to retain the tenants' deposits plus applicable interest to partially offset the monetary award issued in the landlord's favour in this decision. No interest is payable over this period. As the landlord has been successful in his application, I allow him to recover his \$50.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the following terms, which allows the landlord to recover unpaid rent and his filing fee and to retain the tenants' deposits:

Item	Amount
Tenants' Reduction in Rent for August 2013	-\$100.00
Unpaid September 2013 Rent (\$1,350.00 - \$100.00 = \$1,250.00)	1,250.00
Unpaid October 2013 Rent (\$1,350.00 - \$100.00 = \$1,250.00)	1,250.00

Less Pet Damage & Security Deposits (\$675.00 + \$675.00 = \$1,350.00)	-1,350.00
Recovery of Filing Fee for Landlord's Application	50.00
Total Monetary Order	\$1,100.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 24, 2013

Residential Tenancy Branch

