



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 19, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security or pet deposit; for 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 Tenants for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Landlord confirmed receipt of the Tenant's evidence. The Tenant confirmed receipt of a copy of the two page application for dispute resolution and the hearing documents back in August but argued that the Landlord did not serve them with his evidence until November 21, 2013. She stated that as a result of the late service she has not had an opportunity to respond to that evidence.

The Landlord affirmed that he did not personally serve his evidence upon the Tenant and *Residential Tenancy Branch* until November 21, 2013. He initially stated that he was out of town for work when the Tenant served her evidence and later stated he was out of town for personal reasons and not work. He argued that he waited to put his evidence together so that he could provide a response to the Tenant's submission.

Rule 3.4 of the *Residential Tenancy Branch Rules of Procedure* stipulates that to the extent possible, the applicant **must** file copies of all available documents, photographs, video or audio evidence at the same time as the application is filed [emphasis added].

In this case the Landlord filed his application on August 19, 2013. The Tenants served their evidence on approximately October 21, 2013, and the Landlord waited a full month until serving his evidence on November 21, 2013. The Landlord's evidence had not been received on the *Residential Tenancy Branch* file by the start of this hearing and the Tenant argued that they had not had an opportunity to respond to the late evidence. Accordingly, I find the Landlord's evidence was not served in accordance with the Rules of Procedure, and it will not be considered in my decision, pursuant to 11.5 of the *Rules of Procedure*. I did however, consider the Landlord's 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

Has the Landlord met the burden of proof to be awarded a Monetary Order?

Background and Evidence

The parties confirmed they entered into a written fixed term tenancy agreement that began on October 1, 2010 and switched to a month to month tenancy after one year. Rent was payable on the first of each month in the amount of \$1,275.00 and on September 8, 2010 the Tenants paid \$637.50 as the security deposit. No condition inspection report forms were completed at move in or move out. The Tenants vacated the unit by July 29, 2013 and have not provided the Landlord with their forwarding address.

The Landlord testified that this house was built in the 70's and that he purchased the home a few months prior to the Tenants moving in. He repainted the main floor, remodeled the bathroom, cleaned the carpets, and installed laminate flooring in the kitchen. He also created a separate suite in the basement. He rented out the top floor to these Tenants and his daughter resided in the basement suite.

The Landlord initially stated that while he was out of town for work his daughter called him at the end of July to say she saw the Tenants moving their possessions. He sent a text to the Tenants and they confirmed they were moving out. He returned home in mid August and confirmed the house was vacant. He argued that the Tenants did not provide him with one months notice so he is claiming unpaid rent for August and September because he was not able to re-rent the unit right away.

The Landlord claimed that the Tenants left unit dirty and with some damage when they moved out at the end of July 2013. He is seeking \$1,953.00 in damages consisting of the following:

\$200.00	for debris removal -The Tenants left a trampoline frame, chairs, and garbage in the yard and between the shed and fence. (\$20.00 landfill fees + \$30.00 use of his vehicle + 4 hours of labour x \$25.00/hr)
\$189.00	Cost to professionally clean the carpets
\$78.00	Interior cleaning – They had to clean the entire unit, including the walls
\$200.00	Drywall repairs – the Tenants left numerous holes in the walls and several marks from floor to ceiling
\$700.00	Paint – required to paint the entire unit
\$500.00	Landlord's labour to paint the entire unit
\$86.00	miscellaneous cleaning and painting supplies

The Tenant disputed all items claimed and argued that she provided written notice to end tenancy on July 1, 2013, by placing her letter in the Landlord's daughter's mailbox. She argued that the Landlord's daughter always told them that she was also their landlord because she was part owner of the house.

The Tenant later accepted responsibility for the carpet cleaning. She confirmed that she had not arranged to have the carpets cleaned when they moved out and she also confirmed she left the trampoline frame and one chair in the yard. She stated that she did all the cleaning in the rental unit, including all appliances, as displayed in the photos she provided into evidence. She said the rental unit walls had reasonable damage for a family living in there for almost three years. There were nail holes from where they hung stuff from the walls but there were no fist holes, dings, dents, or damages to the walls other than normal living. She noted that the Landlord had not submitted receipts to prove he purchased \$700.00 of paint.

In closing, the Landlord argued the holes left in the walls were not normal damage. There were several holes that were created to run T.V. cable through, and one wall even had large scuff marks from floor to ceiling. There were other damages that he was not claiming because they have not yet been fixed. He submitted pictures, but they were submitted in his late evidence.

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.

The Tenants accepted responsibility for the cost of carpet cleaning. Accordingly, I award the Landlord damages for carpet cleaning in the amount of **\$189.00**.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, there was no move-in condition inspection report form, and the Landlord relied on his oral testimony as evidence of the condition of the rental unit at the start of the Tenancy. No evidence was on file at the start of the hearing, as the Landlord did not submit his evidence within the requirements set out in the Rules of Procedure. The Tenant disputed all damages being claimed except for the carpet cleaning bill.

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 Landlord has the burden to prove damages occurred during the course of the tenancy. Accordingly, the only evidence before me, during this proceeding, was disputed verbal testimony and the Tenants' photos of the condition of the unit. I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof for all four criteria for damages, as listed above. Accordingly, I dismiss the remaining damages (\$1,953.00 - \$189.00 carpet cleaning) claim, without leave to reapply.

Section 45(1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, rent was payable on or before the first of each month. Therefore, the Tenants were required to serve the Landlord one month notice to end their tenancy no later than June 30, 2013, if they wished to end the tenancy July 31, 2013. The Tenants notice was allegedly left in the Landlord's daughter's mailbox on July 1, 2013.

Section 90 of the Act stipulates that if service is conducted by posting to the door or leaving in the mailbox, the document is deemed received three days after it is served.

Based on the above, the Landlord is deemed served the notice to end tenancy effective July 4, 2013. Therefore, I find the Tenants did not provide proper notice and they ended the tenancy in breach of Section 45 of the Act. The Landlord was not able to re-rent the unit for August 1, 2013. Accordingly, I award the Landlord loss of rent for August 2013 in the amount of **\$1,275.00**.

Section 44(1)(d) of the Act stipulates that a tenancy has ended on the date when a tenant vacates or abandons the unit.

In this case the tenancy ended July 29, 2013, when the Tenants vacated the unit. The tenancy was a month to month tenancy at that time; therefore, the Tenants had no legal obligation to the tenancy past the required notice period of August 31, 2013. Accordingly, I dismiss the Landlord's request for loss of September 2013, rent, without leave to reapply.

The Landlord has been partially 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:

Carpet cleaning	\$ 189.00
Loss of Rent for August 2013	1,275.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,514.00
LESS: Security Deposit \$637.50 + Interest 0.00	<u>-637.50</u>
Offset amount due to the Landlord	<u>\$ 876.50</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$876.50**. 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: November 27, 2013

Residential Tenancy Branch

