



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MND, FF

Introduction and Procedural Matters

An Interim Decision was issued in this matter, on November 14, 2013, in order to allow the tenant to submit further documentary evidence verifying the withdrawal of the monthly rent from her bank account. The Interim Decision mentioned that the most accurate proof would be a proper bank statement from the tenants' bank.

In the Interim Decision, I recited the Introduction, Issues, and Background and Evidence, without making any findings or conclusions, pending the receipt of the tenant's evidence. The Interim Decision is incorporated by reference and should be read in conjunction with this Decision.

The tenant complied with my order, as further documentary proof was faxed and received by the Residential Tenancy Branch ("RTB") on November 19, 2013.

The tenant, instead of a bank statement, supplied an unsigned, 1 page document, with a bank letterhead in the upper left hand corner. The document recited that the full amount was withdrawn from the tenant's account. The document further referenced a cheque number of 10 digits.

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, which falls in sections 7 and 67, 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.

Unpaid rent for July 2013-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement. In the case before me, I am not convinced by the tenants' evidence that they paid rent for July.

I find the unsigned, 1 page document submitted by the tenant after the date of the hearing pursuant to my request to provide a bank statement inconclusive and invalid, and further does not prove that the landlords received \$850 for the July rent.

The document submitted by the tenant shows that her bank referenced a cheque number containing 10 digits, when the cheque itself contained a cheque number of three digits, all zeros, and that number was reincorporated in bank processing in the bottom left hand corner of the cheque. This document is left open to doubt.

I therefore accept the landlords' evidence that the rent cheque for July received by the tenants was returned to the landlords due to non-sufficient funds and I approve their claim for \$850.

Loss of rent revenue-

As to the issue of loss of revenue, Section 45 (1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy.

In the case before me, I find the landlords submitted undisputed evidence that the tenants failed to give sufficient written notice that they were vacating the rental unit and therefore the tenants were responsible to pay monthly rent to the landlords the following

month, August 2013, subject to the landlords' requirement that they take reasonable measures to minimize their loss.

In this instance, I find the landlord failed to submit sufficient evidence that they took reasonable steps to mitigate their loss of unpaid rent. I reached this conclusion due to the landlord's failure to submit any evidence of their attempts to immediately advertise the rental unit, other than a copy of an online listing in late August. I was further persuaded by the landlord's admission that they increased the amount of the requested monthly rent, which I find shows that the landlords failed to show reasonable measures in seeking to minimize their loss.

As I find the landlord submitted insufficient evidence that they have met step 4 of their burden of proof, I dismiss their monetary claim for loss of rent revenue for August 2013, in the amount of \$850.

Cleaning-

I find the landlords submitted insufficient evidence to prove that they incurred a loss of \$100 for cleaning, or that the tenants were responsible, due to the lack of receipts or condition inspection reports.

I therefore dismiss the landlord's monetary claim of \$100 for cleaning.

As the landlord has been partially successful with their application, I award the landlord recovery of their filing fee \$50.

Due to the above, I find the landlord is entitled to a total monetary award of \$900, comprised of unpaid rent of \$850 for July 2013 and the filing fee of \$50.

Conclusion

The landlord's application for monetary compensation is granted in part.

At the landlords' request, I direct them to retain the tenants' security deposit of \$425 in partial satisfaction of their monetary award of \$900 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$475, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, 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 such enforcement are 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: November 22, 2013

Residential Tenancy Branch

