



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR MNSD MNDC MND FF
 CNC CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on November 18, 2013, seeking an Orders of Possession for unpaid rent or utilities and cause. The Landlord also sought a Monetary Order for: unpaid rent or utilities; to keep all of the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for damage to the rental unit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on November 8, 2013, seeking an Order to cancel the Notices to end tenancy for unpaid rent and for cause.

The Landlord submitted documentary evidence which indicates the Tenants were served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on November 21, 2013, by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenants are deemed served notice of this proceeding on November 26 2013, five days after they were mailed, in accordance with section 90 of the Act.

No one appeared on behalf of the Tenants despite the Tenants being served with notice of the Landlord's application in accordance with the Act and despite having their own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenants.

Issue(s) to be Decided

1. Has the Landlord regained possession of the unit?
2. Should the Landlord be issued a Monetary Order?
3. Should the Tenants' application be dismissed?

Background and Evidence

The evidence indicates the parties entered into a written fixed term tenancy agreement that began on September 1, 2013 and was set to expire on August 31, 2014. Rent is payable on the 30th of each month in the amount of \$700.00 and on August 28, 2013, the Tenants paid \$350.00 as the security deposit.

The Landlord testified that when the Tenants failed to pay the November 1, 2013 rent she posted a 10 Day Notice to their door on November 3, 2013. She said she noticed the Tenant moving some boxes out near the end of November so she contacted the *Residential Tenancy Branch* and determined that she could post a notice of entry and go inside to see if they vacated the unit. She said she regained possession of the unit on December 6, 2013, when she found the unit was empty. This is also the date she had the locks changed because no keys were returned.

The Landlord confirmed that she has regained possession. Therefore, she no longer requires an order of possession.

She is seeking a monetary order of \$2,690.00 which consists of two month's rent (November and December 2 x \$700.00); \$1,000.00 for damages to her garage roof caused by the Tenant's; and \$290.00 for damage to the interior walls. The Landlord stated that the amounts claimed were obtained from verbal quotes from a neighboring contractor.

Analysis

Given the evidence before me, in the absence of testimony from the Tenants who did not appear despite this hearing being convened to hear matters for their own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by her evidence.

Landlord's Application

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.

Order of Possession - The Landlord has withdrawn her request for Orders of Possession as she regained possession on December 6, 2013.

Claim for unpaid rent. The Tenants were served a 10 Day Notice when it was posted to their door on November 3, 2013. The Tenants have not met the burden of proof to cancel the Notice, therefore, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, **November 16, 2013.**

The Landlord claims for unpaid rent of \$700.00 for November 2013, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the 30th of each month. Therefore, I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid rent of **\$700.00.**

Use & Occupancy – As noted above this tenancy ended November 16, 2013, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for December 2013.

The Landlord did not regain possession of the unit until December 6, 2013, and has not been able to re-rent the unit. Therefore I award the Landlord **\$700.00** for use and occupancy of the unit up to December 31, 2013.

Claim for Damages. Section 32 (3) of the *Act* provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the *Act*, leaving the rental unit with some damage at the end of the tenancy.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$1,290.00** (\$1,000.00 + \$290.00).

Filing Fee \$50.00- I find that the Landlord has succeeded with their application and is entitled to recover the cost of the filing fee from the Tenants.

Monetary Order – the Landlord is entitled to a monetary claim and 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:

November 2013 rent	\$ 700.00
December Use and Occupancy	700.00
Damages	1,290.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,690.00
LESS: Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
Offset amount due to the Landlord	<u>\$2,340.00</u>

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$2,340.00**. 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.

The Tenants' application is HEREBY DISMISSED, without leave to reapply.

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: December 30, 2013

Residential Tenancy Branch

