



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: MNR, O, FF
TENANT: MNSD, OLC, RPP, LRE, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for unpaid rent, to recover the filing fee for this proceeding and for other considerations.

The Tenants filed for the return of double the Tenants' security deposit, for the landlord to comply with the Act, regulations or tenancy agreement, for the return of personal property, to set restriction on the landlord's right of entry and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on January 24, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on January 23, 2014 in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Are the Landlords entitled to unpaid rent and if so how much?

Tenant:

1. Are the Tenants entitled to the return of double the security deposit?
2. Have the Landlords complied with the Act, regulations or tenancy agreement.
3. Are the Tenants entitled to the return of personal property?
4. Should the Landlords have restriction put on them to enter the unit?

Background and Evidence

This tenancy started on January 15, 2014 as a fixed term tenancy for 1 year with an expiry date of January 15, 2015. Rent was \$1,450.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$725.00 on December 7, 2013.

The Landlord said he issued a 10 Day Notice to End Tenancy for unpaid rent on January 22, 2014 for \$725.00 in unpaid rent for January 15, 2014 to January 31, 2014. The Tenants' Counsel said the Tenants received the Notice to End Tenancy and they filed an application to dispute this Notice on January 22, 2014. The Tenants' Counsel continued to say the Tenants believed the tenancy was frustrated and so they moved out of the rental unit on January 27, 2014. The male Tenant said he has not returned the rental unit keys to date because no one has contacted him. As well the Tenants removed the part of the application to dispute this Notice to End Tenancy from their application as they had already moved out of the unit. The Tenants Counsel said the Tenants application is for monetary compensation for costs the Tenants incurred to move out of the rental unit and for their application.

The Landlord said the Tenants also have unpaid rent for February, 2014 of \$1,450.00 as they moved out of the unit on February 3, 2014 and they put a stop payment on the February, 2014 rent cheque.

The Tenants said they did put a stop payment of the February, 2014 cheque because they thought the tenancy was over.

The Tenants' Counsel said the Tenants believed they had paid the rent from January 15, 2014 to January 31, 2014 with a cheque written on December 7, 2013 for an amount of \$1,450.00. The Tenants provided a copy of the cheque and there are notes on the cheque that says D.D \$725.00 and rent 01-15 to 02-01 \$725.00.

The Landlord said he accepted that cheque as the payment of the security deposit in the amount of \$725.00 and the balance of the cheque \$725.00 was an early access fee for the Tenants to have access to the unit from December 7, 2013 to January 15, 2014. This early access fee was to enable the Tenants to move their belongings into the unit and get the unit ready for them to move in. The Landlord said these two items are documented in the tenancy agreement and the addendum to the tenancy agreement. The security deposit is documented on page 3 of the tenancy agreement and the early access fee is included in the second and fourth clause of the addendum to the tenancy agreement. The second clause of the agreement states the Tenants have early access to the unit to move contents in on December 7, 2013. Clause four indicates a payment of the security deposit of \$725.00 and the payment of half a month's rent \$725.00 for early access due to delivery of the keys on December 7, 2013. The Landlord said the Tenants paid the security deposit and early access fee but did not pay the January 15, 2014 to January 31, 2014 rent of \$725.00 which is why he issued the 10 Day Notice to End Tenancy for Unpaid Rent.

The Tenants' Counsel said the Tenancy Agreement has a standard clause numbered 1 on page 2 that says any added terms cannot change the rights or obligations of the parties under the Residential Tenancy Act. The Tenants' Counsel indicated the addendum conditions may change the rights and obligations under the Act.

The Tenants' Counsel continued to say the Tenants moved out of the rental unit because they did not want to continue the tenancy and they thought the tenancy was over because of the Notice to End Tenancy issued by the Landlord. The Tenants moved back to the unit they previously lived in and now have applied for their moving costs and the costs associated with this application. The Tenants are claiming the following costs because they believe the Landlord breached the tenancy agreement by issuing a 10 Day Notice to End Tenancy for Unpaid Rent when they believe there was no unpaid rent. The Tenants Counsel said the Tenants are claiming the following damages:

Double the Security Deposit of \$725.00	\$1,450.00	
Movers expenses	\$2,109.45	
Canada Post	\$ 108.00	
Phone expenses	\$ 45.00	
Fortis expenses	\$ 25.00	
Tenants time for moving	\$ 600.00	
Fuel	\$ 250.00	
Cleaning costs	\$ 125.00	
TOTAL		\$3,420.45

The Landlord said he issued the 10 Day Notice to End Tenancy for Unpaid Rent to get the January, 2014 rent paid and he did not want to end the tenancy. Further the Landlord said the Tenants gave him no notice they were moving out they just choose to move out of the rental unit. The Landlord continued to say that he found new tenants

for the rental unit and he included a copy of that tenancy agreement which started on February 6, 2014. The Landlord said he is requesting the full February, 2014 rent from the Tenants, but he has recovered \$750.00 of rent from the new tenants for the month of February, 2014.

The female Tenant said in closing that they were honest people and they feel they have not been treated well. The cheque they wrote on December 7, 2013 they thought was for the rent for January, 2014 and the security deposit therefore she does not believe there is any unpaid rent. As well the female Tenant said she rewrote all the post dated cheques to correct the date for the 15th of the month to the 1st of the month.

The Male Tenant said in closing that he too believed the cheque they issued to the Landlord on December 7, 2013 was for the January, 2014 rent, so there is no unpaid rent.

The Tenants' Counsel said the Landlords are not claiming any damages so the Tenants should get their full security deposit or double the security deposit returned and if the Landlord is unsuccessful in proving unpaid rent then the Tenants should receive compensation for their moving costs and application expenses. As well the Tenants' Counsel requested that the Landlord return all the Tenants post dated cheques as soon as possible.

The female Landlord who joined the hearing late said in closing that she believes the Tenants deceived the Landlords and the December 7, 2013 cheque the Tenants issued to the Landlords was for the security deposit and the early access fee.

The male Landlord said in closing that he feels bad about any bad feelings that have resulted from this tenancy. He believes and the tenancy agreement supports his claim that there is unpaid rent for January 15 to January 31, 2014 in the amount of \$725.00 and the Tenants moved out of the unit by their own choice and put a stop payment on the February, 2014 rent cheque so he is out rent money for February, 2014. The male Landlord also said the Tenants gave him no notice that they were moving.

Analysis

There was much contradictory testimony given on how things took place in this tenancy and the main issue was disputed by the parties which was whether the rent for January 15, 2014 to January 31, 2014 was paid. The Landlord said the tenancy agreement/tenancy addendum and the 10 Day Notice to End Tenancy for Unpaid Rent proves the December 7, 2013 cheque issued by the Tenants is for the early access fee and the security deposit. The Landlord said the addendum to the tenancy agreement clearly states an early access fee of \$725.00 and it was paid on December 7, 2014 and early access was give on December 7, 2013. As well the Landlord said they issue the 10 Day Notice to End Tenancy for Unpaid Rent to get the rent paid not to end the tenancy. Further the Landlord said and the Tenants did not give any notice that they

were moving out and ended the tenancy by their choice. The Landlord said the rent was not paid for January 15, 2014 to January 31, 2014.

The Tenants say the cheque issued on December 7, 2013 was for the January, 2014 rent and the security deposit. Although the cheque has notes on it that it is for the January, 2014 rent by the balance of probabilities and the timing of the issuing of the cheque it appears that the cheque was issued to gain early access to the rental unit. Normally the rent is not due until the start of a tenancy and in this case the tenancy agreement indicates the tenancy started on January 15, 2014, so rent was not due until January 15, 2014. I accept the Landlord's testimony that the December 7, 2013 cheque that the Tenants issued to the Landlord was for the security deposit in the amount of \$725.00 and the early access fee of \$725.00. As well I find the early access fee in the addendum does not affect the rights and obligations of the parties under the Residential Tenancy Act so the Tenants' Counsel's concerns about the addendum's validity are dismissed. I find the Tenants have unpaid rent of \$725.00 for January, 2014.

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent. Consequently, I find the Tenants are responsible for the rent of \$725.00 for the period of January 15, 2014 to January 31, 2014 in the amount of \$725.00.

Further I find the Tenants are responsible for loss rental income the Landlord may have suffered by moving out of the rental unit prior to the end of the fixed term tenancy agreement date of January 15, 2015. Section 7(2) of the Act also states a party must try all reasonable things to minimize a loss and in this case the Landlords mitigated their loss by finding a new tenant to start a tenancy on February 6, 2014. I find the Tenants are responsible for lost rental income from February 1, 2014 to February 6, 2014 in the amount of \$1,450.00 monthly rent / 28 days in February = \$51.79/day X 6- **(correction to 5 days, correction made April 14, 2014)** days in February = ~~\$310.74~~ **\$258.95 (correction to \$258.95, correction made April 14, 2014)**. The Tenants are not responsible for the terms of the new tenancy agreement and the Tenants obligations end as soon as a new tenancy agreement is in effect. I find the new tenancy agreement was in effect on February 6, 2014 and the Tenants obligations end as of February 6, 2014.

With respect to the Tenants application for damages as a result of the Landlord breaching the tenancy agreement by issuing a 10 Day Notice to End Tenancy for

Unpaid Rent when the rent was paid, I find the rent was not paid and the Tenants have not established grounds to prove their application; therefore I find the Tenants breached the tenancy agreement by not paying the January, 2014 rent. Consequently I dismiss the Tenants application for damages without leave to reapply.

Further the Tenants have applied for the return of the post dated cheques for the tenancy and I order the Landlord to return all the Tenants cheques forthwith. With respect to the Tenants other applications for the Landlord to comply with the Act and to restrict the Landlords' right of entry to the rental unit as the tenancy has ended these items are now immaterial and I dismiss the Tenants requests for the Landlord to comply with the Act and for restriction to the Landlords' right of entry to the rental unit.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Unpaid rent	\$ 725.00	
	Loss rental income	\$ 310.71	\$258.95
	Recover filing fee	\$ 50.00	
	Subtotal:	\$ 1,085.71	\$1,033.95
Less:	Security Deposit	\$ 725.00	
	Subtotal:		\$ 725.00
	Balance Owing		\$ 360.71 \$308.95

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of the filing fee for their application that they have already paid.

Conclusion

A Monetary Order in the amount of ~~\$360.74~~ **\$308.95 (correction to \$308.95, correction made April 14, 2014)** has been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is 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: March 11, 2014

Residential Tenancy Branch

