



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 695996 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served personally on the tenant MD, on December 24, 2013.

I find that the tenant MD has been duly served in accordance with the Act.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant DC and JW, on December 24, 2013 by registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants DC, AND JW, have been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary matter

The landlord withdrew her claim for loss of revenue and damages. Therefore, I find the landlord is at liberty to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2013 and was to expire on March 31, 2014. Rent in the amount of \$1,350.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenants. The rental unit was discovered abandoned by the tenants on December 18, 2013.

The landlord's agent testified that the tenants had placed a stop payment on the rent cheque for December 18, 2013. The landlord's agent stated that she sent text messages to tenants regarding the stop payment and on December 18, 2013, she finally received a response from the tenants stated that they had vacated the premises.

The landlord's agent testified the tenants gave her no notice and this was a breach of the fixed term agreement. The landlord seeks to recover the unpaid rent for December 2013, in the amount of \$1,350.00.

The landlord's agent testified that the tenants failed to pay the water invoice. The landlord seeks to recover the amount of \$198.67. Filed in evidence is a copy of the water invoice the above amount.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant 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. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 26 of the Residential Tenancy Act states:

26 (1) 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.

The evidence of the landlord's agent was the tenants did not pay rent owed for December 2013, as they had placed a stop payment of the rent cheque. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for December 2013, in the amount of **\$1,350.00**

The evidence of the landlord's agent was the tenants did not pay the water invoice. I find the tenants have breached the tenancy agreement when they failed to the utilities. Therefore, I find the landlord is entitled to recover unpaid rent for December 2013, in the amount of **\$198.67**.

I find that the landlord has established a total monetary claim of **\$1,548.67** comprised of the above described amounts. As the damages and loss of revenue was not dealt with at today's hearing, I allow the landlord to recover \$50.00 for the filing fee.

I order that the landlord retain the security deposit and interest of **\$675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$923.67**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The landlord is at liberty to reapply for damages and loss of revenue.

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: April 10, 2014

Residential Tenancy Branch

