



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREENBRIER HOLDINGS LTD. CARE OF GATEWAY PROPERTY
MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the tenants’ security deposit, and to recover the filing fee.

Tenant “EC” and two agents for the landlord (the “agents”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence package from the landlord and that he had the opportunity to review that documentary evidence prior to the hearing. The tenant confirmed that he did not submit documentary evidence in response to the landlord’s application. I find the tenants were served in accordance with the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2012, and tenant “EC” was added to the tenancy agreement on March 4, 2013. The fixed term tenancy reverted to a periodic, month to month tenancy after May 31, 2013. Monthly rent in the amount of \$1,250.00 was due on the first day of each month. The tenants paid a security deposit of \$625.00, which the landlord

continues to hold. Tenant "EC" stated that he vacated the rental unit by the end of December 2013, while tenant "RA" vacated the rental unit on January 2, 2014. The agents confirmed that tenant "EC" provided a proper one month notice to end the tenancy to the landlord in November 2013, which was effective at the end of December of 2013. The agents and tenant "EC" agreed that tenant "RA" did not vacate the rental unit until January 2, 2014.

The landlord is seeking loss of January 2014 rent in the amount of \$1,250.00 due to tenant "RA" not providing notice to end the tenancy. Tenant "EC" and "RA" were co-tenants who signed the same tenancy agreement. The landlord is also seeking \$180.00 for cleaning costs, which tenant "EC" agreed to by mutual agreement during the hearing and will be described below.

I note that landlord agent, "DN" wrote on the landlord's application for dispute resolution that the tenants had a "\$10.00 credit" and as a result, I will be apply this credit later at the end of this decision.

Settlement Agreement

During the hearing, the agents and tenant "EC" formed a mutually settled agreement regarding the \$180.00 claim for cleaning costs. As a result, the landlord's claim for cleaning costs will not be included in the analysis section of this decision as the cleaning costs which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as a mutually resolved matter related to this tenancy.

Evidence relating to the remainder of landlord's claim

The landlord has claimed \$1,250.00 for loss of January 2014 rent. The agents testified under oath that tenant "EC" provided proper notice under the *Act* in November 2013 that he would be ending the tenancy and vacating the rental unit by December 31, 2013. There was no dispute that tenant "RA" did not vacate the rental unit until January 2, 2014.

The agents testified that as of January 3, 2014, they began to advertise the rental unit on several website and on a sign outside the rental building. The agents confirmed that they did not submit any documentary evidence to support the efforts made on the part of the landlord to re-rent the rental unit after January 2, 2014. The agents testified that the rental unit was re-rented as of February 1, 2014.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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.

Landlord's claim for loss of January 2014 rent – The landlord has claimed \$1,250.00 for loss of January 2014 rent and the agents testified under oath that tenant “EC” provided proper notice under the *Act* in November 2013 that he would be ending the tenancy and vacating the rental unit by December 31, 2013. There was no dispute that tenant “RA” did not vacate the rental unit until January 2, 2014.

Residential Tenancy Branch Policy Guideline #13 – Rights and Responsibilities of Co-tenants, states that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. Furthermore, Policy Guideline #13 states:

“...If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, **and all tenants must move out, even where the notice has not been signed by all tenants.**”

[my emphasis added]

Given the above, I find that the proper notice given by tenant “EC” was effective for co-tenant, “RA” and that the tenancy ended on December 31, 2013. Therefore, I find that by tenant remaining in the rental unit until January 2, 2014, that tenant “RA” was overholding the rental unit by two days. Therefore, I find the tenants are jointly and severally liable for two days of overholding in the rental unit. As monthly rent was \$1,250.00 per month, and January 2014 had 31 days, I find that \$1,250.00 divided by 31 days equals \$40.32 per day as a daily rental rate. Given the above, I find that the landlord has established a claim for **\$80.64** comprised of two days at \$40.32 per day, due to tenant “RA” overholding in the rental unit.

Section 7 of the *Act* requires that when a landlord claims for compensation under the *Act*, that they must do whatever is reasonable to minimize the damage or loss. I find that the landlord provided insufficient evidence to prove that they made reasonable attempts to re-rent the rental unit after January 2, 2014. Therefore, I dismiss the remainder of the landlord’s claim for loss of the remainder of January 2014 rent due to insufficient evidence, without leave to reapply. The tenancy ended for both tenants based on the proper one month notice that the agents confirmed they received in November 2013 from tenant “EC”, effective December 31, 2014.

As some of the landlord’s claim had merit, I grant the landlord the recovery of the **\$50.00** filing fee.

Monetary order – Based on the above, I find the landlord has established a total monetary claim of **\$310.64** comprised of \$180.00 for cleaning costs resolved by way of a mutually settled agreement between the parties, \$80.64 for two days of overholding by tenant “RA”, and \$50.00 for recovery of the filing fee.

I ORDER the landlord to retain **\$310.64** from the tenants’ security deposit of \$625.00, which has accrued no interest since the start of the tenancy, in full satisfaction of the landlord’s monetary claim.

I ORDER the landlord to immediately return the balance of the tenants’ security deposit in the amount of **\$314.36**. Should the landlord fail to immediately return \$314.36 as ordered, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$314.36. Should the tenants require enforcement of the monetary order, the tenants must serve the landlord with the monetary order and the monetary order may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

Conclusion

The landlord was successful with a portion of their claim as described above, in the amount of \$310.64.

The landlord has been ordered to retain \$310.64 from the tenants' security deposit of \$625.00, and to immediately return the balance of the tenant's security deposit in the amount of \$314.36. Should the landlord fail to return \$314.36 as ordered, the tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$314.36.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 2, 2014

Residential Tenancy Branch

