



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 17, 2014, by the Landlords to obtain a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order?

Background and Evidence

The Landlords' Witness provided affirmed testimony that he attended the rental unit with the Landlord sometime in the late fall. When they arrived they found the unit dirty, doors damaged, broken televisions, toys, animal feces, and filled with debris. He stated that there was extensive cleaning required and they did what they could to remove the debris, clean and sterilize the house. He indicated that it appeared the appliances had never been cleaned, there were doors ripped off the hinges, and the floor appeared never to have been swept.

Although the Tenant was given the opportunity to question the Landlords' witness but she declined to do so.

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 1, 2009 and switched to a month to month tenancy after September 1, 2010. The Tenant was required to pay rent of \$800.00 on the first of each month and on September 1, 2009 the Tenant paid \$400.00 as the security deposit. The parties attended the move in condition inspection August 29, 2009, as per the condition inspection report form submitted in the Landlords' evidence.

The Landlords testified that their agent was not able to collect rent for September or October 2013 so on October 1, 2013 he posted a 10 Day eviction Notice to the Tenant's door. The Agent had been told that someone saw a moving truck at the house so when he posted the Notice he looked in a window and could see that there were still possessions inside. The Agent advised the Landlords that the Notice had been removed from the door.

The Landlords stated that they attempted to contact the Tenant by telephone and when she did not return their calls they made arrangements to travel to the rental unit. When they arrived they found the rental unit to be damaged and dirty as supported by the photographs they provided in evidence and their witnesses' testimony. They argued that it took two men over two weeks working 12 hour days to clean and repair the main floor areas. They were not able to remove the remaining debris from the attic or basement before they re-rented the unit in January 1, 2014. Their new tenants agreed to remove the remaining garbage from the house if the Landlords paid for the garbage dumpster, which explains why there was dumping fees from January 2014 that were being claimed.

The Landlords are seeking to recover the two months unpaid rent of \$1,600.00 (2 x \$800.00), their labour to clean and repair the unit at \$900.00, plus landfill fees, dumpster fees, materials and supplies to repair and clean the unit as supported by the receipts provided in their evidence for \$805.52.

The Tenant testified and agreed that she owed the two months' rent of \$1,600.00. She was disputing the claim for labour and materials to clean and repair the unit because she thought she could not enter the rental unit once an eviction notice was posted to the door. She stated that she had returned to the unit on October 1, 2013 to clean but the eviction Notice indicated that she had to be out of the house by October 1, 2013. The Tenant said that she attempted to call the Landlords but was not able to reach them.

Upon review of the photographs provided in the Landlords' evidence, the Tenant argued that some of the articles shown in the pictures were not hers and were at the rental unit from before the start of her tenancy. She acknowledged that one of the doors was damaged by her son but the other door was damaged because they had to slam it to close it because the carpet was too bulky and prevented the door from opening and

closing properly. She also argued that there were several cans of paint at the rental unit; therefore, she should not have to pay for paint.

In closing the Landlords clarified that they were not seeking money for any renovation materials. Their claim is strictly for unpaid rent, labour, and materials to clean and repair damages done during this tenancy.

Analysis

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*.

The Tenant did not dispute the Landlords' claim for September and October 2013 rent. Accordingly, I award the Landlords unpaid rent of **\$1,600.00** (2 x \$800.00).

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.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based on the above, I accept the Landlords' submission that the rental unit was clean and in good order at the beginning of the tenancy, as supported by the condition inspection report form created on August 29, 2009. I further accept that the rental unit was left dirty, damaged, and filled with debris at the end of the tenancy, as supported by the photographs provided in the Landlords' evidence.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy. Accordingly, I find the Landlords have met the burden of proof and I award them damages in the amount of **\$1,705.52** (\$900.00 labour + \$805.52 materials, supplies, and dumping fees).

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent	\$1,600.00
Damages	1,705.52
Filing Fee	<u>50.00</u>
SUBTOTAL	\$3,355.52
LESS: Security Deposit \$400 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$2,955.52</u>

Conclusion

The Landlords have been awarded a Monetary Order for **\$2,955.52**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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.

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: June 06, 2014

Residential Tenancy Branch

