



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 27, 2014, by the Landlords to obtain a Monetary Order for unpaid rent or utilities; 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 Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by each 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

Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on September 15, 2013. The Tenants were required to pay rent of \$1,800.00 on the first of each month and on September 15, 2013 the Tenants paid \$900.00 as the security deposit. The parties completed and signed the move in condition inspection report form on September 15, 2013. The first forwarding address was provided to the Landlords on February 24, 2014.

The Landlords testified that as per their written submissions they followed the tenancy agreement and *Residential Tenancy Act* (hereinafter referred to as the Act). Despite

their attempts to inform and encourage the Tenants to read their tenancy agreement and the Act, the Tenants ended their tenancy without proper notice. As per their evidence they first received notice to end the tenancy from the Tenants by e-mail in mid December 2013 to end the tenancy on January 15, 2014. They responded by telling the Tenants that the tenancy would not end until January 31, 2014.

The Landlord submitted evidence that on December 15, 2013, the Tenants advised by email that they wanted the Landlords to hold off on advertising the unit while they attempted to find another tenant. The Landlords testified that on January 2, 2014, they received an e-mail dated January 1, 2014, stating the Tenants wanted to end the tenancy effective January 31, 2014. The Landlords responded by informing the Tenants they would not accept the e-mail as a notice to end tenancy and that the Tenants were required to provide proper written notice to end the tenancy and it would not be effective until February 28, 2014.

The Landlords argued that they did not receive a written notice to end the tenancy and therefore were not aware that the Tenants were going to move out as of January 31, 2014. They did not know until they were contacted by the Tenant on approximately January 30, 2014 to ask what time the Tenants could return the keys. The Landlords alleged that when they attended the unit, after the Tenants dropped off the keys, they found that it needed additional cleaning, despite being told that the Tenants had cleaned.

Based on the above the Landlords are seeking compensation of \$1,800.00 for January 2014 unpaid rent, \$200.00 for cleaning based on 8 hours @ \$25.00 per hour, plus \$120.13 for natural gas as per the utility bills provided in evidence.

The Tenants testified and acknowledged that their notice to end tenancy was sent by e-mail and was not sent until January 1, 2014. They stated that they understood that technically their notice was supposed to be sent by December 31, 2013; however, given their circumstances they did not understand why their notice was refused by the Landlords when it was only one day late. They noted that the e-mail evidence supports that the Landlords told them notice sent by e-mail was okay.

The Tenants disputed the Landlords' claim for cleaning and argued that they had cleaned the unit before returning the keys. They also noted that there was no move out inspection completed and there was no evidence submitted to prove the unit was left dirty.

The Tenants did not dispute owing the money for the utilities. They did however note that they did not receive copies of the bills until they received the Landlords' evidence.

In closing, the Landlords reiterated that it was not clear to them that the Tenants were in fact moving out on January 31, 2014.

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*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The evidence supports that on January 1, 2014, the Tenants sent an e-mail to the Landlords providing late notice to end their tenancy effective January 31, 2014. This notice was not accepted by the Landlords. As per the foregoing, I find the Tenants ended their tenancy in breach of section 45 of the Act, as listed above, and that breach caused the Landlords to suffer a loss of February 2014 rent. Accordingly, I award the Landlords loss of rent of February rent of **\$1,800.00**.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Landlords have claimed \$200.00 for cleaning charges which the Tenants have disputed. In the absence of evidence to prove the state the rental unit was left in, I find the Landlords provided insufficient evidence and their claim for cleaning is dismissed, without leave to reapply.

The claim for natural gas utilities was not disputed by the Tenants. Accordingly, I award the Landlords the cost of utilities in the amount of **\$120.13**.

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

Monetary Order – I find that the Landlords are 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 Tenants' security deposit plus interest as follows:

Loss of February 2014 rent	\$1,800.00
Utilities – natural gas	120.13
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,970.13
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount due to the Landlords	<u>\$1,070.13</u>

Conclusion

The Landlords have been awarded a Monetary Order for **\$1,070.13**. 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.

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 18, 2014

Residential Tenancy Branch

