



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on March 25, 2014. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Are there damages to the unit and if so how much?
4. Are the Landlords entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and are the Landlords entitled to compensation?
6. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on September 1, 2012 as a fixed term tenancy for 12 months and then continued on a verbal month to month basis. Rent was \$1,850.000 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$925.00 in advance of the tenancy. The Landlords said the Tenant moved out of the rental unit on March 13, 2014 as a result of verbal notice the Tenants gave to the Landlords and a 10 Day Notice to End Tenancy for unpaid rent dated March 3, 2014. Both parties agreed no move in or move out condition inspection reports were completed and signed by the parties.

The Landlord said that the Tenant did not pay rent of \$1,850.00 when it was due on March 1, 2014 so the Landlord personally delivered the Notice to End Tenancy on March 3, 2014 to the Tenants. The Landlord said the Tenants moved out on March 13, 2014, but because there was no proper notice given to move out and the unit was in such poor condition the Landlords were not able to rent the unit for March, 2014 or April 2014. The Landlords' said they are requesting unpaid rent of \$1,850.00 for March, 2014 and lost rental income for April, 2014 in the amount of \$1,850.00.

In addition the Landlords said there was considerable damage to the unit so they are claiming \$6,270.00 in Landlord's labour (313.5 hours @ \$20.00/hour) and \$9,702.61 in materials and supplies to clean and repair the rental unit. The Landlord said they have submitted extensive photographic evidence showing the condition of the unit at the start and the end of the tenancy. As well the Landlords said they have submitted into evidence copies of paid receipts to support their claims.

The Landlords said their total claim is for \$19,722.61 including unpaid rent of \$3,750.00 and \$15,972.61 in labour and supplies to clean and repair the rental unit. As well the Landlords requested to retain the Tenants security deposit of \$925.00 as partial payment of their claim and to recover the filing fee of \$100.00 for this application.

The Tenant said they gave the Landlord verbal notice at the end of January, 2014 that they were moving out at the end of February, 2014. The Tenant continued to say they talked to the Landlord about staying to the middle of March, 2014 and the Landlord could keep the Tenants' security deposit of \$925.00 to pay the rent for March 1, 2014 to March 15, 2014. The Tenants said they do not believe they owe the Landlord any unpaid rent.

Further the Tenant said no condition inspection reports were completed and signed on move in or move out. The Tenant said there was damage to the house on move in, marks on the walls, stains on the carpets and the rental unit was in poor condition. The Tenant continued to say that they were not present when the Landlord took the photographs of the rental unit and the Tenants do not agree with the conditions that the photographs represent.

The Tenant said they cleaned the rental unit and the yard before they moved out, but they did not have time to have the carpets professionally cleaned and they damaged two doors during the tenancy. The Tenants said they would be willing to compensate the Landlord \$200.00 for carpet cleaning and \$200.00 for the damaged doors.

Analysis

Section 26 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:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52[*form and content of notice to end tenancy*].

The Tenants do not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the unpaid rent for March, 2014 in of \$1,850.00 and for lost of rental income for April, 2014 in the amount of \$1,850.00 due to improper notice to end the tenancy.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

On reviewing the evidence and testimony, I find the photographic evidence that the Landlords' submitted does not adequately determine the condition of the rental unit on move in and move out, because there is no agreement between the parties that the photographs were taken as replacement evidence for condition inspection reports. As well the witness testimony and submissions are contradictory; therefore it is unclear as to the condition of the rental unit on move in and on move out. It is the Landlord responsibility to do both these report and if the report are not completed the Landlord is unable to establish the condition of the rental unit at the start or end of the tenancy. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of lack of proof to establish the condition of the rental unit at the start or the end of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

Further as the Tenants agreed to the damage to the doors of \$200.00 and offered \$200.00 to the Landlords' as compensation for carpet cleaning I award the Landlords' \$400.00 for these amounts.

As the Landlord has been partially successful in this matter, the Landlords are also entitled to recover from the Tenants the \$100.00 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:

	Rent arrears:	\$ 1,850.00
	Lost rental income	\$ 1,850.00
	Carpet cleaning	\$ 200.00
	Damage to doors	\$ 200.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$4,200.00
Less:	Security Deposit	\$ 925.00
	Subtotal:	\$ 925.00
	Balance Owing	\$ 3,275.00

Conclusion

A Monetary Order in the amount of \$3,275.00 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 14, 2014

Residential Tenancy Branch

