



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR; MNDC; MNSD; FF; O

Introduction

This is the Landlords' application for a monetary award for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement, to apply the security deposit towards their monetary award; to recover the cost of the filing fee from the Tenant; and for other orders.

This matter was originally heard on March 19, 2014. The Tenant signed into the teleconference, but the Landlords did not attend. The Landlords' application was dismissed. On May 29, 2014, the Landlords filed an Application for Review Consideration, which was granted on May 30, 2014, on the grounds that the Landlords were unable to attend the Hearing on March 19, 2014. This is the new Hearing.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenant with Notice of the new Hearing and a copy of the May 30th Decision by registered mail sent to the Tenants' new address on June 12, 2014.

Preliminary Matters

The Landlords' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlords' application is dismissed.

The Landlords indicate in the "Details of Dispute" section of the Application that they are seeking a monetary award for cleaning the rental unit and damages to the rental unit. Therefore, I amended their application to include a claim for MND.

Issues to be Decided

1. Was the Tenant obliged to provide two months' notice to end the tenancy?
2. Are the Landlords entitled to a monetary reward for cleaning and damages to the rental unit?
3. May the Landlords apply the security deposit towards partial satisfaction of their monetary award?

Background and Evidence

The Landlords' agent gave the following testimony:

The Landlords' agent is the male Landlord's father.

This tenancy began on August 1, 2012. The original tenancy agreement was a one year term lease. At the end of the lease, the parties entered into another lease, for three months, commencing August 1, 2013 and ending October 31, 2013. A copy of the tenancy agreement was provided in evidence, which indicates "At the end of this fixed length of time the tenancy may continue on a month-to-month basis or another fixed length of time".

Monthly rent was \$750.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 at the beginning of the tenancy.

The Landlords' agent stated that the parties had an agreement that the Tenant would give two months' notice to end the tenancy, but he realizes that this might not comply with the Act. The Landlords' agent stated that the Tenant did not provide any written notice that she was ending the tenancy. He stated that the Landlords received an e-mail from the Tenant on November 30, 2013 at 10:15 p.m., asking that the Landlords accept the e-mail as written notice that she was giving one month's notice to end the tenancy effective December 31, 2013. The Landlords' agent stated that the Tenant did not pay rent for December, 2013. The Landlords seek unpaid rent for December, 2013, in the amount of \$750.00 and compensation for loss of revenue for the month of January, 2014, in the amount of \$750.00, for a total of **\$1,500.00**.

On December 2, 2013, the Landlords discovered that the Tenant had abandoned the rental unit, leaving the keys in the rental unit. The Landlords' agent stated that the rental unit was dirty and there was garbage left on the rental property. He said it took several days to clean and that it was a difficult time of year to re-rent the rental unit because of Christmas holidays. The Landlords' agent stated that the rental unit was

advertised on a popular website and that several people called, but it was not rented out for January, 2014.

The Landlords' agent stated that the rental unit was brand new with high end appliances when the Tenant moved in. He testified that the oven had been well used, but obviously never cleaned. The Landlords' agent stated that it took 3 bouts of cleaning to clean the oven. A purple bath matt was left in the washing machine, which had mildew. The Landlords' agent stated that the Tenant had done a "cursory clean", but that it was not reasonably clean and it took more than 20 hours to clean and remove the garbage. The Landlords' agent stated that the "tipping fee" for the garbage was \$20.75. The Landlords seek a monetary award in the amount of **\$470.75** for their labour and the tipping fee.

The Landlords provided photographs of the rental unit at the end of the tenancy in evidence.

The Tenant gave the following testimony:

The Tenant testified that the rental unit was a suite on the ground floor of the rental property. She stated that the Landlords used to live in the upstairs suite, but in September, 2013, they told her they were moving out and had found a family to rent the upstairs suite. The Tenant stated that the new occupants partied and had domestic disputes late into the night, which disrupted her sleep. She stated that on October 31, 2013, at 3:00 a.m., she awoke to the woman screaming "help me". The Tenant stated that she sent an e-mail on October 31, 2013, to the Landlords about the incident and told them she was concerned about her welfare and that the occupants were also doing illicit drug deals at the rental property.

The Tenant stated that she wanted the Landlords to evict the upstairs occupants and when he did not, she told him she would be moving out on December 1, 2013. At that point, the Landlords asked if she would stay if the upstairs occupants were evicted and she said "no". The Tenant testified that she moved out on November 30, 2013.

The Tenant testified that she had no intention of leaving the Landlords in a financially difficult situation, but that she understood that the Landlords were in agreement that she could move out by December 1, 2013. She stated that she contacted the Landlords to do a move out inspection on November 30, 2013, but no inspection was done.

The Tenant agreed that she did not clean the oven before she moved out. She stated that she did not own a purple bath matt and that she checked the washing machine

before she moved out. The Tenant stated that she swept and cleaned the floors and the counters before she moved out.

The Tenant stated that garbage removal was included in her rent, but that since September when the Landlords moved out no one picked up the garbage.

The Landlords' agent gave the following reply:

The Landlords' agent stated that the Tenant sent an e-mail on November 30, 2013, but that it wasn't sent until 7:30 p.m. He stated that the Landlords did not know the Tenant had moved until December 2, 2013.

Analysis

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Was the Tenant obliged to provide two months' notice to end the tenancy?

Section 45 of the Act provides how Tenants can end a tenancy in British Columbia.

I find that after October 31, 2013, this was a month-to-month (periodic) tenancy. Section 45(1) of the Act provides:

Tenant's notice

- 45** (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.

Section 5 of the Act states that the Act cannot be avoided and that any effort to do so is of no effect. Therefore, I find that the Tenant was not obliged to provide two months' notice to end the tenancy.

In this case, the Tenant submitted that she ended the tenancy because she felt unsafe because of the upstairs occupants. Section 45(3) of the Act provides:

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.

The Tenant testified that she e-mailed the Landlords that she was moving out. However, Section 52 of the Act requires a notice to end tenancy to be **in writing** in order to be effective. Furthermore, Section 45(3) of the Act also requires that a tenant provide **written notice** of the landlord's breach of a material term of the tenancy agreement and to give the landlord a reasonable period after the landlord receives the written notice to correct the situation.

I find that the Tenant did not provide due notice to end the tenancy, either under Section 45(1) or Section 45(3) of the Act. I find that the Landlords are entitled to a monetary award for unpaid rent in the amount of **\$750.00** for the month of December, 2013.

Section 7 of the Act requires an applicant to mitigate or minimize their loss, and I find that the Landlords did not provide sufficient evidence of their attempts to re-rent the rental unit for the month of January, 2014 (for example, copies of the website ads, a list of the number of prospective tenants and the dates they viewed the rental unit, etc.). Therefore, I decline to award the Landlords' with a monetary award for January, 2014, rent.

The Landlords did not provide a receipt for the "tipping fee" and therefore I find they did not provide sufficient evidence to prove the amount they paid to dispose of the garbage and this portion of their claim. The Landlords provided photographs of the stove and some garbage. The Tenant acknowledged that there was garbage left at the rental unit and that she had not cleaned the stove or the oven. The Tenant submitted that she left the remainder of the rental unit in reasonably clean condition and I find that the Landlords did not provide sufficient evidence to support a claim of \$450.00 for cleaning. Therefore, I allow this portion of the Landlords' claim in the amount of 5 hours for cleaning the stove and 3 hours for removing and disposing of the garbage for a total of 8 hours @\$20.00 per hour, **\$160.00**.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent for December, 2013	\$750.00
Damages	\$160.00
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$960.00
Less security deposit	<u>-\$375.00</u>
TOTAL	\$585.00

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$585.00** for service upon the Tenant. This Order may be filed in the Provincial Court 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: August 20, 2014

Residential Tenancy Branch

