



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened to deal with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for a monetary order for unpaid rent and alleged damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee paid for this application.

The landlord and their agent appeared; the tenants did not appear.

The landlord testified that they served each tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on March 24, 2014. The landlords supplied testimony of the tracking numbers of the registered mail and that they had confirmation that the mail was delivered, after speaking with the female tenant.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded in the tenants' absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the landlords entitled to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlords submitted that this tenancy began on October 1, 2011, that it ended on January 31, 2014, when the tenants vacated the rental unit, that the monthly rent at the end of the tenancy was \$2050, and that the tenants paid a security deposit of \$975, which the landlords have retained.

The landlords' monetary claim is \$2765, comprised of loss of rent revenue for February 2014, in the amount of \$2050, mail box key replacement for \$10, oven repair of \$453, and \$250 for the services of a tracing service in finding the tenants' address.

The landlords' relevant documentary evidence included the written tenancy agreement, the Form K signed by the tenants noting strata responsibilities, an email of January 30, 2014, from the male tenant informing the landlords the tenants were moving out the next day on January 31, 2014, due to relocation to another country, text message communication between the landlord's agent and the tenants, a receipt from a home store for a key replacement, a tracing services invoice, an invoice for the oven repair, and copies of tenants' cheques.

In support of their application, the landlords submitted that they received insufficient notice from the tenants that they were vacating the rental unit, as they received only one day's notice. The landlords submitted that they advertised the rental unit immediately, but were unable to obtain new tenants for the month of February, due to the short notice.

The landlords submitted that the tenants never moved out of the country, and instead they moved into another unit in the same building.

Due to this, the landlords claimed loss of rent revenue for February 2014.

As to the claim for an oven repair, the landlords submitted that the oven was new at the beginning of the tenancy, but that it was broken and required repair after the tenants vacated. In further explanation, the landlords submitted that the oven was installed in 2008.

The landlords submitted that they attempted to arrange a move-out condition inspection, through text message, but were unable as the tenants failed to respond and left without leaving a forwarding address.

Along these lines, the landlords submitted that they were required to retain the services of a tracing service to locate the tenants, the costs for which they should be compensated.

As to the mail box key, the landlords submitted they were entitled to this cost as the tenants failed to return the key.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlords in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Loss of rent revenue-

As to the issue of loss of revenue, Section 45(1) of the Act requires a tenant to give written notice to end the tenancy one clear calendar month before the next rent payment is due.

In the case before me, I find the landlords submitted sufficient, undisputed evidence that the tenants failed to give a proper written notice as required by section 88 of the Act, methods of delivery of documents, that they were vacating, and that the said insufficient notice caused the landlords to suffer a loss of rent revenue for the month of February 2014. I therefore find the landlords are entitled to a monetary award of \$2050.

Oven repair-

I find that the landlords submitted sufficient undisputed evidence that the tenants caused damage to the oven during the tenancy, which was beyond reasonable wear and tear, and that they are entitled to compensation for the same.

As to the claim for the cost of the oven repair claimed by the landlord, Residential Tenancy Branch Policy Guideline 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. A stove/oven has a useful life of 15 years and, as the oven was 6 years old at the time of repair, I find that the stove/oven had depreciated by 40%. I therefore find the landlord is entitled to a monetary award of \$271.80 (\$453 – 40% depreciated value depreciated value, or \$181.20).

Key replacement-

Under the Act, a tenant is required to return all keys to the landlord and in this instance, I find the landlords submitted sufficient, undisputed evidence that the tenants failed to do so.

I therefore approve their claim for \$10.

Tracing services cost-

An applicant may only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages, such as locating the tenants, are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the landlords claim for \$250 is dismissed.

Due to the above, I find the landlord is entitled to a total monetary award of \$2381.80, comprised of loss of rent revenue of \$2050, stove/oven repair for \$271.80, key replacement for \$10, and for recovery of the filing fee paid for this application of \$50.

Conclusion

The landlords’ application for monetary compensation is granted in part.

At the landlords' request, I direct them to retain the tenant's security deposit of \$975 in partial satisfaction of their monetary award of \$2381.80 and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1406.80, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlords this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicants and the respondents.

Dated: July 28, 2014

Residential Tenancy Branch

