



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 718009 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for damage and cleaning of the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that he served both the Tenants with the Notice of Hearing and Application personally on April 14, 2014. Despite this no one appeared on behalf of the Tenants. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing, the Agent for the Landlord withdrew the portion of the claim dealing with alleged damages to the rental unit. The Agent explained that the Landlord was currently only pursuing the alleged rent owed by the Tenants.

The portion of the Landlord's claim dealing with damages is therefore dismissed with leave to reapply.

I note that the claim for rent exceeds the \$5,000.00 applied for by the Landlord, and the Agent for the Landlord acknowledged they were abandoning the amounts claimed that exceed \$5,000.00.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began February 1, 2013, with the parties entering into a written tenancy agreement. The Tenants who signed the tenancy agreement consist of the person named in the Application and the company named in the Application. The monthly rent was \$2,700.00 payable on the first day of each month. The Tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00.

The Agent for the Landlord testified that the Tenants did not pay the rent for February or March of 2014. The Agent explained that the Tenants vacated the property on or about April 3, 2014.

The Landlord claims for \$5,400.00 for two months of rent owed, less the \$400.00 which exceeds the \$5,000.00 claimed for by the Landlord in the Application.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Landlord has proven that the Tenants failed to pay rent for two months and this is a breach of the Act and the Tenancy Agreement. Under section 26 of the Act, the Tenants may not withhold rent, unless certain conditions apply, such as an order from an Arbitrator at the Branch or with other authority under the Act. There is no evidence before me that the Tenants had any authority to withhold rent under the Act. Furthermore, under section 6 of the Tenancy Agreement the Tenants were required to pay the Landlord rent in the amount of \$2,700.00 per month.

I find that the Tenants breached the Act and Tenancy Agreement by failing to pay rent. I find the Landlord has established that the amount owed is for two months of rent. I further find that the Landlord took reasonable steps to minimize the losses.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$5,000.00** comprised of two months of rent, less the \$400.00 abandoned by the Landlord (2 x \$2,700.00 = \$5,400.00, less \$400.00 abandoned).

I order that the Landlord may retain the deposits totalling **\$1,700.00** in partial satisfaction of the claim, and I grant the Landlord the \$50.00 filing fee for the Application, and an order under section 67 of the Act for the Tenants to pay the Landlord the balance due of **\$3,350.00**. ($\$5,000.00 - \$1,700.00 = \$3,300.00$, + \$50.00 = \$3,350.00)

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Based on the undisputed testimony and evidence, I find the Tenants breached the Act and tenancy agreement by failing to pay rent when due.

The Landlord is awarded the rent owed less an abandoned amount, and may keep the deposits paid in partial satisfaction of the claims, and may recover the filing fee for the Application, and is granted a monetary order for the balance due of \$3,350.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 07, 2014

Residential Tenancy Branch

