



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to keep all or part of the tenants’ security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”), a property manager for the landlord, tenant J.C., who indicated he was representing both tenants, and legal counsel for the tenants (“counsel”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Both parties confirmed receiving documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. Based on the above, I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

During the hearing, the agent for the landlord requested to withdraw the portion of the landlord’s claim relating to compensation sought for the loss of sale in the amount of \$1,500.00. I find that a reduction of the landlord’s claim does not prejudice the tenants in any way. As a result, the landlord’s claim for compensation for loss of sale in the amount of \$1,500.00 was not considered.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

There is no dispute that originally a fixed term tenancy began on July 1, 2013 and was scheduled to end on June 30, 2014. Monthly rent in the amount of \$2,200.00 was due on the first day of each month. The tenants paid a security deposit of \$1,100.00 at the start of the tenancy which the landlord continues to hold. The tenants vacated the rental unit on May 31, 2014.

The landlord's amended monetary claim which reflects the withdrawal of the \$1,500.00 portion of the landlord's claim relating to the loss of sale described above, is comprised of the following:

1. Unpaid May 2014 rent	\$2,200.00
2. Loss of June 2014 rent	\$2,200.00
3. Liquidated damages	\$500.00
4. <i>Unpaid water bill (resolved by mutual agreement described below)</i>	\$315.46
5. <i>Oven Cleaning (resolved by mutual agreement described below)</i>	\$50.00
6. Lawn clean up	\$230.00
7. Filing fee	\$100.00
TOTAL	\$5,595.46

Settlement Agreement

During the hearing, the parties reached a mutually settled agreement regarding two items; item 4 described above as the unpaid water bill of \$315.46 and item 5 described above as the cost of oven cleaning in the amount of \$50.00. The tenants have agreed to compensate the landlord for these portions of the landlord's claim without dispute and will be accounted for later in this Decision. As a result, the corresponding item numbers will not be included in the analysis section of this Decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of

the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Regarding item 1, there was no dispute between the parties that the tenants failed to pay the landlord May 2014 rent in the amount of \$2,200.00. The tenants confirmed that they did not receive a 2 Month Notice to End Tenancy for Landlord's Use of Property under the *Act*. The tenants did not vacate the rental unit until May 31, 2014.

Regarding item 2, the landlord is claiming \$2,200.00 for loss of June 2014 rent. The agent confirmed that the rent cheque from the tenants for June 2014 rent was returned to the tenants by the landlord and marked as "not required". There is no dispute that the landlord made an offer in writing to the tenants dated April 11, 2014, a copy of which was submitted in evidence, which indicates that the tenants were advised that they would not be required to pay the last month's rent and could end the fixed term early in exchange for the tenants "working with and accommodating showings with the owners realtor" as well as "keeping the home clean and tidy".

The agent stated that the tenants did not keep their end of the agreement and did not work with the Realtor and interfered with the sale of the property, which the tenants dispute. The agent referred to several e-mails submitted in evidence. The tenant also referred to several e-mails submitted in evidence.

Regarding item 3, the landlord is claiming \$500.00 for liquidated damages pursuant to section #26 of the tenancy agreement. Tenants' counsel took the position that if June 2014 rent was not owed based on the landlord's written offer to the tenants which the tenants accepted, that there no grounds for liquidated damages by the landlord accepting an early end to the fixed term tenancy, which was supported by the landlord returning the tenants' June 2014 rent cheque which was marked as "not required."

Regarding item 6, the landlord is claiming \$230.00 for lawn clean up. The agent referred to section 28 of the tenancy agreement and photos submitted in evidence. The tenant stated that the lawn mower provided by the landlord would not work which is why the lawn could not be mowed. Counsel for the tenants stated that there was no photo evidence of the flower beds submitted in evidence. Section 28 of the tenancy agreement reads in part, "...The TENANT agrees to water and keep lawns, shrubs, garden beds and bushes in a neat and tidy condition; to cut and trim lawns on a regular basis; to rake and dispose of fallen leaves...". The agent referred to a document which indicates "Invoice" that does not indicate the name of the person who allegedly completed the work, does not include a business name of the business the person

worked for, does not indicate any business or personal contact information, and does not indicate a tax number such as a GST number.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what 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 did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – Regarding item 1, there was no dispute between the parties that the tenants failed to pay the landlord May 2014 rent in the amount of \$2,200.00. The tenants confirmed that they did not receive a 2 Month Notice to End Tenancy for Landlord's Use of Property under the *Act*. The tenants did not vacate the rental unit until May 31, 2014. Given the above, I find the landlord has met the burden of proof and I find the tenants breached section 26 of the *Act* which requires that May 2014 rent was due and payable on May 1, 2014. Therefore, **I grant** the landlord **\$2,200.00** for this portion of their claim.

Item 2 - The landlord is claiming \$2,200.00 for loss of June 2014 rent. I find the landlord has failed to meet the burden of proof to prove parts one and two of the test for damages or loss for this portion of their claim. I find that the letter dated April 11, 2014 offered the tenants the ability to end the fixed term tenancy early without paying the last month's rent, which I find is supported by the landlord's action of returning the tenants' June 2014 rent cheque with the wording "not required". Consequently, I find that June 2014 rent was not required due to the fixed term tenancy ending by way of a mutual agreement between the parties. Although the parties dispute whether the tenants complied with the landlord's request for the tenants to cooperate with the Realtor and to keep the rental unit clean and tidy, I find the landlord has provided insufficient evidence to support that the tenants failed to comply with the written offer dated April 11, 2014. I find that both versions of events are equally probable and therefore, as the landlord has the burden of proof, **I dismiss** this portion of the landlord's claim **without leave to reapply**, due to insufficient evidence.

Item 3 - The landlord is claiming \$500.00 for liquidated damages pursuant to section #26 of the tenancy agreement. Consistent with my finding in item #2 above, **I dismiss** this portion of the landlord's claim, **without leave to reapply** due to insufficient evidence, as I find that June 2014 rent was not required. I find that as the tenancy ended early by way of a mutual agreement between the parties that the tenants are not responsible for liquidated damages.

Item 6 - The landlord is claiming \$230.00 for lawn clean up. I find the landlord has failed to meet the burden of proof for this portion of their claim. I find that the document submitted by the landlord does not support the value being claimed as the document is missing the name of the person who allegedly completed the work, does not include a business name of the business the person worked for, does not indicate any business or personal contact information, and does not indicate a tax number such as a GST number. Based on the above, I afford the document no weight and **I dismiss** this portion of the landlord's claim, **without leave to reapply**, due to insufficient evidence.

Regarding item 7, as only a portion of the landlord's claim had merit, **I grant** the landlord the recovery of half of the \$100.00 filing fee, in the amount of **\$50.00**.

Monetary order – Based on the above, **I find** the landlord has established a total monetary claim of **\$2,615.46** comprised of \$2,200.00 for item 1, \$315.46 for item 4, \$50.00 for item 5, plus \$50.00 of the filing fee. I note that items 4 and 5 were resolved by way of a settlement agreement between the parties. As the landlord continues to hold the tenants' \$1,100.00 security deposit, **I ORDER** the landlord to retain the tenants' full security deposit of \$1,100.00 in partial satisfaction of the landlord's monetary claim. **I**

grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$1,515.46** which must be served on the tenants and may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

Conclusion

The landlord is successful with items 1, 4 and 5 and a portion of the filing fee which is item 7. I order the parties to comply with the terms of their settlement agreement as described above regarding items 4 and 5.

Items 2, 3 and 6 of the landlord's claim have been dismissed without leave to reapply, due to insufficient evidence.

The landlord has been ordered to retain the tenants' full security deposit of \$1,100.00. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$1,515.46, which must be served on the tenants and may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 14, 2014

Residential Tenancy Branch

