



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on August 5, 2014, by the Landlords to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by both Landlords. The Landlords testified that each Tenant was personally served with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on August 6, 2014, at their new residence. Based on the submissions of the Landlords I find each Tenant was sufficiently served notice of this proceeding and I proceeded in the Tenants' absence.

Issue(s) to be Decided

Have the Landlords proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence in support of their claim which included a copy of the tenancy agreement, a 10 Day Notice to end tenancy for unpaid rent, receipts for work performed on the unit, and photographs of the rental unit taken August 4, 2014.

The evidence provided that the Tenants entered into a written month to month tenancy agreement that commenced on February 1, 2013. The Landlords confirmed that the Tenants were required to pay rent of \$1,450.00 on the first of each month and on January 26, 2013 the Tenants paid \$725.00 as the security deposit.

The Landlords testified that when the Tenants failed to pay the outstanding rent they personally served the Tenants with a 10 Day Notice to end tenancy on July 14, 2014, for \$620.00 owing from June 2014 plus \$1,450.00 that was due from July 1, 2014. The Landlords submitted that the Tenants told them that they could not pay the rent so they would be vacating the unit at the end of July 2014.

The Landlords stated that they contacted the Tenants on August 1, 2014 and were told that the Tenants were moving out and that they would leave the key in the mailbox when they were finished. When the Landlords attended the unit on August 2, 2014 they found the Tenant and the Tenant's brother was still moving possessions out of the unit. On August 3, 2014, at 6:30

p.m. the Landlords attended the unit to show it to prospective tenants and found the Tenants still had a large amount of possessions inside the unit and were taking out another load.

The Landlords submitted that the Tenant's brother was still at the unit on August 3, 2014, around 9:00 p.m. and that he told the Landlords that he was taking the "last load" of possessions and they would not be returning.

The Landlords argued that the rental unit was left filled with debris, dirty, and with some damages, as supported by their photographs. The Landlords now seek \$3,570.00 which is comprised of \$2,070.00 unpaid rent (\$620.00 + \$1,450.00) plus \$1,500.00 to clean and repair the unit. The Landlords stated that at the time they submitted their claim they estimated the cost to clean up the unit and repair the damages at \$1,500.00 but have spent much more. The Landlords submitted additional receipts in their evidence in attempts to seek a higher monetary claim; however, they did not amend their application and did not serve an amended application to the Tenants.

Analysis

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlords and corroborated by their documentary evidence.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The evidence supports that the Tenants breached section 26 of the Act as they did not pay their rent in accordance with their tenancy agreement. As of July 14, 2014 the Tenants owed a total of \$2,070.00 in unpaid rent, as supported by the 10 Day Notice. Accordingly, I award the Landlords unpaid rent in the amount of **\$2,070.00**.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

As per the foregoing I find the Landlords have met the burden of proof and I award them damages in the amount of **\$1,500.00** as claimed.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 2.5* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Landlords submitted additional receipts in attempts to increase their monetary claim; however, they did not file an amended application and simply listed the additional claims in their evidence. Accordingly, as per the above, I declined to hear matters which were not claimed on the original application and those amounts are dismissed, without leave to reapply.

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent	\$2,070.00
Damages & repairs	1,500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$3,620.00
LESS: Security Deposit \$725.00 + Interest 0.00	<u>-725.00</u>
Offset amount due to the Landlord	<u>\$2,895.00</u>

Conclusion

The Landlords have been issued a Monetary Order for **\$2,895.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province 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: October 07, 2014

Residential Tenancy Branch

