



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, compensation for damage to the unit and damage or loss under the Act; to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing.

Preliminary Matters

The tenancy has ended; the landlord does not require an Order of possession.

This hearing was originally scheduled to be heard on September 25, 2014 by a different arbitrator. That hearing was adjourned as the result of some sort of service issues which were not before me.

The landlord said he did not receive the notice of hearing for this hearing but he was in a Residential Tenancy Branch (RTB) office on October 10, 2014 and enquired. He was told the hearing was to be held today. The landlord understood on September 25, 2014 that the hearing was being adjourned to another date.

The landlord applied for dispute resolution on July 24, 2014. The landlord did not serve the tenants with a written submission until the day prior to this hearing. The landlord's written submission was given to the RTB on October 14, 2014; only 1 day prior to the hearing. The landlord was aware of the need to serve evidence as quickly as possible and no less than at least 5 days prior to the hearing. The Rules of Procedure require an applicant to serve their evidence as soon as possible; waiting until the last possible moment to submit evidence can result in evidence being set aside. Therefore, as the landlord's written submission was not given to the tenant's and RTB within the required time-frame that evidence was set aside. The landlord was at liberty to make oral submissions.

The landlord confirmed receipt of the tenant's written submission and photographs on September 20, 2014.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent, cleaning and loss of rent revenue?

May the landlord retain the security deposit paid by the tenants?

Background and Evidence

The tenancy commenced on September 15, 2013; rent was \$650.00 due on the 1st day of each month. A security deposit in the sum of \$325.00 was paid.

The landlord said the tenancy was a 1 year fixed-term. The tenants said it was month-to-month term and that they never received a copy of the signed agreement. The landlord did not supply a copy of the tenancy agreement as evidence and did not dispute the tenant's submission that they had not been given a copy of the agreement.

A move-in condition inspection report was not completed.

The landlord has made the following claim:

June 2014 rent	250.00
July 2014 rent	650.00
August 2014 rent revenue	650.00
Cleaning	1,000.00
TOTAL	2,550.00

The landlord had claimed a late fee for June but realized a fee was not included as a term of the tenancy.

The parties confirmed that a 1 month Notice to end tenancy for cause was issued on May 31, 2014 and a 10 day notice to end tenancy for unpaid rent was issued on June 4, 2014. The tenants applied to dispute both Notices and a hearing was scheduled for August 31, 2014.

The landlord said that he could not place new tenants in the unit as the tenants waited until several days prior to their hearing to cancel that hearing. The landlord has claimed unpaid rent and loss of revenue for July and August, as the tenants did not vacate.

The tenants said that they located a new rental unit and that on July 21, 2014; they cancelled their hearing and accepted the Notice ending tenancy. On July 26, 2014 the tenants sent the landlord text messages and told him they had vacated and cancelled the hearing. On July 29, 2014 they again contacted the landlord; they had cleaned the unit and wanted to give the keys to the landlord. The landlord would not allow the tenants to leave the keys in the building mail drop box, as it was broken. The landlord did not come to the rental unit and said he wanted the tenants to leave the keys, in person. At time to meet was not arranged by the landlord.

The landlord said that with the hearing package given to him for the tenant's August 31, 2014 hearing, a letter was provided informing the landlord that he could not take possession of the rental unit. The landlord said he received a telephone call in mid-July, notifying him he could pick up the keys to the unit.

The tenants confirmed that they owe the landlord \$250.00 for June 2014 rent.

The landlord said that as he could not obtain possession of the unit during August 2014, he could not rent the unit and has claimed the loss of rent revenue in the sum of \$650.00.

The landlord had a person who lives in the building clean the unit. He was charged \$1,000.00. No verification of the cleaning cost was supplied as evidence.

The tenants did not provide a written forwarding address at the end of the tenancy. The landlord used a service address from ID previously given by the tenants.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenants have confirmed they owe the landlord \$250.00 June rent; therefore, I find, pursuant to section 65 of the Act that the landlord is entitled to compensation in that sum.

As the tenants remained in the rental unit during the month of July I find that the landlord is entitled to compensation in the sum of \$650.00 rent. The tenants disputed both Notices to end tenancy, but then cancelled the hearing on July 21, 2014 and accepted the tenancy would end.

I find, on the balance of probabilities, that the tenants told the landlord the hearing was cancelled. There was no evidence before me that the landlord took any steps to re-rent the unit. No copies of advertisements or any other evidence of efforts made to locate new tenants was provided by the landlord. Therefore, I find that the claim for loss of rent revenue for August 2014 is dismissed.

In the absence of condition inspection reports setting out the state of the unit at the start and end of the tenancy and, in the absence of verification of the claim made, such as proof of payment, I find that the cost of cleaning is dismissed.

I find that the landlord's application has merit and, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
June 2014 rent	250.00	250.00
July 2014 rent	650.00	650.00
August 2014 rent revenue	650.00	0
Cleaning	1,000.00	0
TOTAL	2,550.00	900.00

Based on these determinations I grant the landlord a monetary Order for the balance of \$625.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to a monetary Order for unpaid rent in the sum of \$900.00.

The balance of the monetary claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

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 17, 2014

Residential Tenancy Branch

