



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed July 14, 2014): OPR, OPC, OPB, MNDC, MND, MNSD, MNR, SS, FF

Tenant's application (filed December 5, 2014): MNSD, MNDC, FF

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking an Order of Possession; a monetary award for damages and unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of her monetary award; for an order allowing the Landlord to serve documents or evidence in a different way than required by the Act; and to recover the cost of the filing fee from the Tenant.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit; for compensation for damage or loss under the Act, regulation or tenancy agreement; and for recovery of the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord provided the female Tenant with the Landlord's Notice of Hearing documents and copies of her documentary evidence and her documentary evidence by priority post sent to the female Tenant's place of business, on July 21, 2014. The Landlord stated that the parties primarily communicated by e-mail throughout the tenancy and that she e-mailed the female Tenant to ask for a forwarding address so she could be served. The Landlord stated that the female Tenant provided her the work address.

The Tenants signed into the Hearing and filed their own Application in "response to claim, counter claim against [Landlord]". Therefore, pursuant to the provisions of Section 71(2)(c) of the Act, I find that the Tenants were both sufficiently served for the purposes of this Act.

The Tenants filed their Application against the Landlord on December 5, 2014, and served the Landlord at her residence on December 10, 2014, by handing their Notice of Hearing documents and copies of their documentary evidence (135 pages). The Tenants stated that they did not file their cross-application earlier, or serve the Landlord with their documents until December 10, 2014, because the female Tenant works a lot, the male Tenant was away, and they were dealing with massive flooding. I explained to the Tenants that their documentary evidence was late and that it was procedurally unfair to expect the Landlord to respond to their documentary evidence within the limited time frame available. **The Tenants' Application was**

dismissed with leave to reapply and the Hearing continued with respect to the Landlord's Application only.

At the outset of the Hearing, it was determined that the Landlord's application for an Order of Possession was not necessary, as the tenancy ended on June 30, 2014, and the Landlord has taken back possession of the rental property. Therefore, this portion of the Landlord's application is dismissed.

It is important to note that the Landlord also provided an additional 22 pages of evidence to the Residential Tenancy Branch on December 16, 2014. These documents were not considered, as they were not provided to the Tenants and they were very late.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for cleaning and damage to the rental property, unpaid rent, and compensation for the Landlord's travel and administrative costs?
2. May the Landlord apply the security deposit towards partial satisfaction of her monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on August 1, 2013, for a fixed term of one year ending 12:00 noon, July 31, 2014. Monthly rent was \$1,800.00. The Tenants paid a security deposit in the amount of \$900.00 at the beginning of the tenancy.

The Tenants submitted that they ended their tenancy early, with more than one month's notice, because the Landlord had failed to provide them with quiet enjoyment of the rental unit. The Tenants testified that the Landlord did not respect their privacy and that she visited the rental property without their knowledge or permission. The Tenants stated that after the rental property was listed for sale in March, 2014, there were showings 3 or 4 times a month. The Landlord submitted that she did not receive notice that the Tenants were moving out on June 30, 2014, until June 23, 2014, by e-mail. She denied the Tenants' claim that she failed to provide quiet enjoyment of the rental unit. She stated that she had the female Tenant's approval to access the property, with the exception of one time, when the female Tenant called the RCMP to complain that the Landlord was taking unauthorized photographs of the rental property. The Landlord testified that the Tenants did not give her any warning that they were ending the tenancy because of a breach of quiet enjoyment. The Landlord seeks unpaid rent for the month of July, 2014, in the amount of **\$1,800.00**.

The Landlord stated that she was attempting to sell the rental unit and that the Tenants did not comply with a term in the tenancy agreement which provided that the Tenants were responsible for watering and weeding the garden and cutting the lawn. The Landlord stated that the Tenants allowed the lawn to grow 8 inches tall and other grassy areas were "5 – 6 feet" tall.

She stated that the flower beds were not attended and that several plants died. The Landlord testified that the Tenants did not maintain the ride-on mower and that as a result a belt was destroyed and a wheel came off. She stated that the Tenants spilt oil in the driveway. The Landlord stated that the rental property was certified organic and that this oil spill voided that status. The Landlord testified that the ride-on mower was approximately 7 years old. The Landlord seeks damages related to the maintenance of the garden and yard, as follows:

Cost of lawn mowing and weeding for month of July, 2014	\$400.00
Watering gardens once a day for month of July, 2014	\$310.00
Landscape's cost for weeding and deadheading	\$400.00
Removal of hazardous fluids from driveway	\$500.00
Replacement of shrubs and plants	\$50.00
Repairs and maintenance tune-up for ride-on mower	\$350.00
Pick up and drop off ride-on mower	<u>\$50.00</u>
	\$2,060.00

The Tenants denied that the lawn was ever 8 inches tall. They agreed that it was a little long once, when they had been away for a week. The Tenants testified that the back part of the acreage was a cleared field that did not require cutting. They stated that a horse grazed there, which kept the grass short. The Tenants stated that the plants and shrubs the Landlord referred to did not die. They stated that the Landlord dug them up and took them to her new house.

The Tenants stated that they had a verbal agreement with the Landlord that the property would not be listed for sale until the lease was up. They submitted that after the Landlord listed the property in March, 2014, they gave her notice in April, 2014, that they would be moving out at the end of June, 2014. The Tenants testified that most of their communications with the Landlord were done by e-mail.

The Tenants stated that the ride-on mower appeared to be older than 7 years. They denied damaging the mower and stated that the male Tenant did some maintenance work on it.

The Tenants testified that there was a "very small oil leak" on the driveway which stained a few rocks. The Tenants stated that they cleaned up the oil.

The Landlord testified that the Tenants used approximately 3 cords of wood that did not belong to them. She stated that she told the Tenants at the beginning of the tenancy that they were welcome to use the firewood, but that they would be expected to replace it when they moved out. The Landlord seeks **\$540.00** for this part of her application.

The Tenants testified that they did use a small amount of wood, but that the Landlord had told them that they were welcome to use it and not have to pay for it. They stated that the Landlord merely asked that they leave whatever they did not use for the next occupant. They disputed that they used 3 cords of wood.

The Landlord stated that the Tenants did not remove the gazebo fabric in the fall and that it was destroyed by the elements. The Landlord seeks compensation in the amount of **\$150.00** for new gazebo fabric.

The Tenants acknowledged that the gazebo was damaged in a wind storm, but stated that the Landlord had not given instructions to remove the fabric in the fall.

The Landlord testified that the Tenants did not properly secure bins in an outbuilding that contained bird seed and cracked corn. As a result, there was a rat problem. The Landlord seeks compensation for the purchase of a "rat zapper", in the amount of **\$100.00**. The Landlord stated that two bins and the seed/corn were destroyed. She seeks to recover the replacement cost for those items as well, in the amount of **\$75.00**.

The Tenants testified that the bin lids were chewed up before they moved into the rental property. They submitted that rats were an on-going problem at the back side of the property.

The Landlord stated that the Tenants, or their guests, broke signage at the front of the driveway by running over it with a vehicle. The Landlord seeks **\$20.00** for this portion of her claim.

The Tenants stated that the Landlord's real estate agent ran over the sign in March, 2014.

The Landlord also seeks to recover the cost of changing five locks at the rental property, "to ensure the safety of the new renter", in the amount of **\$100.00**.

The Tenants disputed this part of the Landlord's claim, stating that changing locks for new occupants was the Landlord's responsibility at the end of a tenancy. They testified that they returned all of the keys to the Landlord at the end of the tenancy.

The Landlord also seeks to recover the cost of repairs and paint to the interior of the rental unit (**\$150.00**), electrician's repair bill for bedroom fan and 3 damaged sconces (**\$250.00**), and the cost of removal of glue to the front door and painting the door (**\$100.00**).

The Tenants stated that an inspection was scheduled for June 30, 2014, but the Landlord did not complete a Condition Inspection Report at the end of the tenancy. The Tenants testified that the front door was an old door that was damaged due to normal wear and tear. They stated that a decorative frame came loose and that they "took care of it" and repaired the damage, using special epoxy glue designed for that purpose.

The Tenants submitted that the Landlord has not substantiated most of her damage claims. They testified that the Landlord supplied them with only three invoices/quotes for the damages claimed:

1. One for work completed by the Landlord's own business;
2. \$36.00 invoice for a weed eater; and
3. An invoice in the amount of \$44.32.

The male Tenant stated that he paid \$43.65 for a fan and lights on June 26, 2014, and that the Landlord refused to allow him to install it and threatened to call the police if he tried to give them to her. The Tenant testified that the fan/lights are still at the light store and that he provided the Landlord with the receipt. The Tenant submitted that the Landlord can still pick up the item at the store. A copy of the receipt was provided in the Tenant's documentary evidence.

Analysis

Is the Landlord entitled to a monetary award for damage to the rental unit?

The Landlord provided verbal testimony with respect to her monetary claim, which

differed from the monetary claim which was provided in her evidence package. The Landlord's application was not amended and re-served upon the Tenants and therefore I have not considered or recorded the Landlord's verbal claim. I have considered and recorded the Landlord's claim that was served upon the Tenants.

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 52 of the Act provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 88 of the Act provides the methods for serving documents. Service by way of e-mail is not a method of service allowed by the Act.

A copy of the Tenants' notice was provided in their evidence package. It is not signed or dated. I find that the Tenants did not comply with Sections 52 and 88 of the Act and that therefore their notice to end the tenancy was not a valid notice. I find that the Landlord is entitled to compensation for loss of revenue for the month of July, 2014, in the amount of **\$1,800.00**. Having found that the Tenant's notice was not a valid notice to end the tenancy, I make no finding with respect to whether or not the Tenants were entitled to end the lease early under the provisions of Section 45(3) of the Act.

The Tenants disputed the Landlord's claims in their entirety. I find that the Landlord did not provide sufficient evidence to prove the remainder of her Application, for the following reasons:

- Two receipts totalling \$126.42 were provided for the mower repairs. The Landlord has claimed \$350.00, plus \$50.00 for "pick-up and drop off". Even if I were to find that the Tenants were in violation of the Act or tenancy agreement, which I do not, I find that the Landlord has not proven element 3 of the test for damages provided above.
- Similarly, the Landlord provided insufficient evidence of the cost of replacing shrubs and plants, removing hazardous fluids from the driveway, and the cost of lawn mowing, weeding, watering and deadheading.
- I find that the Landlord did not provide sufficient evidence that the Tenants used 3 cords of wood during the tenancy, or that they were required to replace or pay for that which they used, or the cost of replacement. There was no written agreement between the parties with respect to the wood and no reference to it in the tenancy agreement.
- If there are special treatments or instructions with respect to furniture, appliances or fixtures that are included in a tenancy agreement, a landlord is expected to provide the tenant with written instructions. In this case, I find that the Landlord did not meet part 4 of the test for damages. In addition, no proof of the cost of repair was provided.

- I find that the Landlord did not provide sufficient proof that the Tenants breached the tenancy agreement with respect to her claim for compensation for the purchase of a rat zapper or seed/corn, or sufficient proof with respect to the cost to purchase of these items.
- I find that the Landlord did not provide sufficient proof that the Tenants damaged her sign, or sufficient proof with respect to the cost to replace the sign.
- Section 25 of the Act provides that at the request of a tenant at the start of a new tenancy, the landlord must: rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit; and pay all costs associated with the changes. In other words, the Tenant is not responsible for paying the cost of rekeying the locks. The Landlord did not dispute that the Tenants had returned the keys at the end of the tenancy.
- I find that the Landlord did not provide sufficient proof with respect to the cost of painting the walls and removing the glue to the front door.
- I accept the Tenants' testimony that they paid for, and offered to repair, the fan and lights before the end of the tenancy and that the Landlord refused them access. The Landlord is at liberty to pick up the fixture, if she chooses to do so.

The Landlord's Application discloses a total monetary claim of \$5,395.00, including a filing fee of \$50.00. The filing fee for an Application in an amount more than \$5,000.00 is \$100.00., but the Landlord only paid \$50.00. The Landlord has been partially successful in her application and I find that she is entitled to recover a portion of the filing fee that she paid from the Tenants, in the amount of **\$25.00**.

I find that the Landlord has established a monetary award in the total amount of **\$1,825.00**, including partial recovery of the filing fee. Pursuant to the provisions of Section 72 of the Act, I hereby set off the security deposit in the amount of **\$900.00** against the Landlord's monetary award. I hereby provide the Landlord with a Monetary Order for the balance, in the amount of **\$925.00**.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$925.00** for service upon the Tenants. This Order may be filed in the Provincial Court 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: January 12, 2015

Residential Tenancy Branch

