Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

Upon review of the Landlord's application the Landlord stated that the Tenants had rented the basement suite, the barn, and use of the acreage and not the entire house at the address listed on his application for dispute resolution.

The documentary evidence and tenancy agreement listed the rental unit as being the basement at the address written on the Landlords' application. Therefore, I amendment the style of cause to clarify that the rental unit in this matter was the basement and not the entire house, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords on July 24, 2014, to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by one Landlord A.P. who provided affirmed testimony that he was representing both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Landlord provided documentary evidence and testified that each Tenant was served notice of this application and hearing by registered mail on July 24, 2014. Both packages were sent to the address obtained by a skip tracer as being the address of the Tenant J.H. The package addressed to C.S. was returned and marked moved/unknown. The package addressed J.H. was returned and marked unclaimed.

Canada Post tracking information confirms that Canada Post attempted delivery of the packages on July 25, 2014 and that a notice card was left that date to advise each Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on August 4, 2014 that the registered mail was available for pick up. As of August 15, 2014 the Canada Post tracking information confirms that the Tenants still did not pick up the registered mail.

The Landlord testified that J.H. was sent a second registered mail package on December 8, 2014, with his evidence, to the same address as the above packages were sent. The Landlord provided the tracking information in his oral testimony and confirmed that the Canada Post website tracking information was provided in evidence and confirmed that J.H. signed for the Landlord's evidence package on December 11, 2014, which supported that the first package for J.H. had been sent to the correct address.

Based on the above information, I find that the Tenant J.H. was provided with 3 opportunities to receive the registered mail for notice of this hearing and he did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Tenant J.H. to avoid service and I find J.H. was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act.*

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents and stipulates that if served by registered mail it must be sent to the address where the person resides.

In this case the package that was sent addressed to C.S. was not sent to the address where she resided, rather it was sent to the address where J.H. resided. Therefore, I cannot find that she was sufficiently served notice of this proceeding in accordance with the Act. Accordingly, I find that the request for a Monetary Order against both Tenants must be amended to include only the male Tenant J.H. who had been properly served with Notice of this Proceeding. As the second Tenant C.S. had not been properly served the Application for Dispute Resolution as required, the monetary claim against C.S. is dismissed without leave to reapply.

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, the move in and move out condition inspection report forms, receipts for materials and work performed on the unit, and a C.D. containing photos of the rental unit at the end of the tenancy.

The Landlord submitted evidence that the Tenants entered into a fixed term tenancy that began on August 1, 2012 and was set to end on July 31, 2013. Rent of $1,300.00 was due on or before the first of each month and on July 20, 2012 the Tenants paid $650.00 as the security deposit. The Landlords' agent conducted the move in inspection and completed the report with the Tenants on July 28, 2012. The move out report was completed by the Landlords on March 15, 2013 in absence of the Tenants.

The Landlord testified that he had contacted the Tenants after their February 1, 2013 rent payment was returned from his bank NSF and he was told that the Tenants had separated. The male Tenant J.H. had remained in the rental unit and despite his promises to pay the rent he did not pay February or March 1, 2013 rent. The Landlords received a text message from the Tenant on March 13, 2013 stating that he was moving out and loading up his possessions at that time. The Landlord said he attended the rental unit that day and found the Tenant was in fact moving out.

The Landlord submitted that the Tenant left the property without paying the past due rent, leaving the rental unit damaged, unclean, littered with garbage that had to be discarded, and without returning the keys.

The Landlords now seek $4,997.74 as per the detailed list and receipts provided in their evidence. In summary, the Landlords' claim consisted of the following:

Unpaid rent for February and March 2013 (2 x $1,300.00)	$2,600.00
Repairs (smoke alarm, door, walls, curtain hooks, sink Waterline, bathroom sink, fan grid, electrical Repairs, lamp bulb and cover, labour)	$1,517.00
Cleaning and garbage removal (suite, barn, yard)	$ 500.00
Replacing the locks	$ 30.22
Utilities (gas and hydro)	$ 350.52
	$4,997.74

Upon review of the items being claimed the Landlord testified that the basement suite was completely renovated in 2010 and had new electrical, plumbing, walls, paint,

flooring, and all new fixtures at that time. The Landlord submitted that their claim for repairs and materials were supported by receipts except for the kitchen fan grid, as that was based on an estimated amount of $100.00.

The Landlord stated that he has since misplaced the bills for the utilities being claimed however, he had made himself a note back in 2013 that listed the amounts the Tenants owed and that is what he based this claim for utilities on.

In closing the Landlord requested to increase his claim to include $200.00 he paid for the skip tracers plus the placement fee they paid to their agent to find a new tenant, as supported by the receipts provided in their evidence.

Analysis

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

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

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 Tenant breached section 26 of the Act by failing to pay his rent that was due on February 1, 2013 and March 1, 2013. Accordingly, I grant the Landlords' application for unpaid rent of **$2,600.00** (2 x $1,300.00).

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; and must return all keys to the Landlord.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean, damaged and failed to return the keys at the end of the tenancy. As per the foregoing I find the Landlord has met the burden of proof and I award them costs for repairs, cleaning, garbage removal, and changing the locks in the amount of **$2,047.22** ($1,517.00 + $500.00 + $30.22)

The Landlords claim $350.52 for unpaid utilities; however, no invoices or receipts were provided in the Landlords' evidence to support the amount being claimed. Accordingly, I find there to be insufficient evidence to award the amounts claimed for utilities, and those amounts are hereby dismissed, without leave to reapply.

In response to the Landlord's request to increase his claim for skip tracing fees and placement fees, 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 # 2.11* 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 did not file an amended application and simply provided the receipts for the additional items in their evidence. Accordingly, I declined to hear those claims which are now dismissed, without leave to reapply.

The Landlords have primarily 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 Feb. and March 2013	$2,600.00
Repairs, cleaning, garbage removal, and locks	2,047.22
Filing Fee	50.00
SUBTOTAL	$4,697.22
LESS: Security Deposit $650.00 + Interest 0.00	-650.00
Offset amount due to the Landlords	**$4,047.22**

Conclusion

As noted above, I found that C.S. had not been served notice of this proceeding as required under section 89 of the Act. Therefore, the claim against C.S. was DISMISSED, without leave to reapply.

The Landlords have been awarded a Monetary Order for **$4,047.22** against J.H. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does 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: January 16, 2015

Residential Tenancy Branch