



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNSD; FF

Introduction:

This is the Landlord's application for a Monetary Order for damages and unpaid rent; to apply the security deposit and accrued interest towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he mailed the Notice of Hearing documents and copies of his documentary evidence to the Tenants, by registered mail, on July 28, 2014. The Landlord provided copies of the registered mail receipts and tracking numbers in evidence. The Landlord acknowledged receipt of the Tenant's documentary evidence.

Issues to be Decided

- Is the Landlord entitled to unpaid rent for the months of June and July, 2014?
- Is the Landlord entitled to recover the cost of repairing windows at the rental unit?
- May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

Background and Evidence

The Tenants moved into the rental unit in 2001. The Landlord purchased the rental unit from the Tenants' former landlord in 2003. The security deposit and accrued interest in the amount of \$687.50 was transferred to the Landlord from the Tenants' former landlord on February 27, 2003.

A copy of the tenancy agreement was provided in evidence. Rent was due on the first day of each month. At the end of the tenancy rent was \$1,559.90.

The Landlord's agent gave the following testimony and evidence:

The Landlord gave the following testimony:

The Landlord testified that the Tenants gave him notice to end the tenancy (the "Tenants' Notice") on June 15, 2014, effective July 15, 2014. The Landlord submitted that the Tenants' Notice was not sufficient to end the tenancy effective July 15, 2014, because rent was due on the first of each month and therefore the effective date of the notice was July 31, 2015.

The Landlord testified that the Tenants did not pay rent in full when it was due on June 1, 2014. He stated that on June 27, 2014, he issued a Notice to End Tenancy for Unpaid Rent (the "Landlord's Notice") in the amount of \$517.31 for rent that was due on June 1, 2014. He stated that he served the Tenants with the Landlord's Notice on June 27, 2014, by leaving it personally with the Tenant DB.

The Landlord testified that he left a voice mail for the Tenant DB, asking when he could show the rental unit, but did not get a response. The Landlord stated that he did not give the Tenants a notice that he was seeking access in order to show the rental unit to perspective renters. The Landlord testified that the Tenants "ignored" the Landlord's Notice and moved out on July 18, 2014. He stated that he re-rented the rental unit in August, 2014, effective September 1, 2014.

The Landlord testified that the Tenants are responsible for two broken windows at the rental unit, which he replaced in November, 2014.

The Landlord seeks a monetary award, calculated as follows:

Unpaid rent for June, 2014	\$517.31
Unpaid rent for July, 2014	\$1,559.90
Cost to repair windows	<u>\$390.00</u>
TOTAL claim	\$2,467.21

The Tenant SB gave the following testimony:

SB testified that rent was paid in full for June, 2014. He stated that he paid \$800.00 at the beginning of June and \$785.10 on June 21, 2014. The Tenant provided copies of money orders in evidence. SB testified that he had agreed with the Landlord that he could pay rent bi-weekly if he added late fees.

SB stated that after the Tenants got the Landlord's Notice, they moved out. They stated that there was a lot of work to do on the house and that it would take the Landlord at least two weeks to fix it.

SB testified that the windows were broken when the Landlord purchased the rental property. He stated that the windows were broken by neighbourhood kids playing road hockey. SB testified that the Landlord knew that the windows were broken when he purchased the rental property and that he should have had the Tenant's former landlord pay for the windows.

The Landlord gave the following reply:

The Landlord submitted that the windows were broken while the Tenants were living in the rental unit and that he believed they were responsible for the damage, whether they broke the windows or the neighbours' children broke the windows.

The Landlord stated that he never agreed that the Tenants could make bi-weekly payments for rent.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy 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,
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.

Based on the copies of the money orders provided by the Tenants, I find that the Tenants paid rent in full for the month of June, 2014. This portion of the Landlord's Application is **dismissed**.

The written tenancy agreement has no provision for late fees. The regulation stipulates that late fees cannot be imposed unless the tenancy agreement provides for late fees.

The Act defines "tenancy agreement" as:

“an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit”

Based on the evidence and the pattern of rental payments during the tenancy, I find that the parties had an agreement that the Tenants would pay rent bi-weekly in exchange for paying late fees. Therefore, I find that rent was due biweekly. The Landlord made no attempt to enforce the clause in the written tenancy agreement which provides that rent must be paid on the first day of each month.

I find that the Landlord did not provide sufficient evidence that he complied with Section 7(2) of the Act with respect to re-renting the rental unit. The Landlord provided insufficient evidence of the reasonable attempts he made to show the rental unit to prospective renters after he received the Tenants' Notice. The Landlord did not provide the Tenants with 24 hour written notice under Section 29 of the Act for the purposes of showing the rental unit. Therefore, I find that the Landlord did not meet part 4 of the test for damages as set out above and this portion of his Application is **dismissed**.

Tenants are responsible for damages caused by themselves or by their invited guests only. The Landlord was aware of the damage when he purchased the rental unit. I find that the Landlord did not provide sufficient evidence under parts 2, 3, or 4 of the test for damages with respect to his claim for the windows. Therefore, this portion of the Landlord's Application is **dismissed**.

The Landlord has been unsuccessful in his Application and I find that he is not entitled to recover the cost of the filing fee from the Tenants.

The Landlord applied against the security deposit and his Application has been dismissed. Therefore, I ORDER that the Landlord return the security deposit, together with accrued interest, to the Tenants.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$711.84**, representing return of the security deposit and accrued interest, for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 29, 2015

Residential Tenancy Branch

