



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for unpaid rent, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by posting the hearing package on the door of the Tenants' rental unit on July 23, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on November 9, 2014, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties hearing package.

During the hearing it was discovered that the Landlord had been served the Tenants evidence package by registered mail on December 22, 2014, but the Landlord did not have it. The Tenants' evidence package is deemed to have been served to the Landlord on December 27, 2014 as per section 90 of the Act.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Tenant said they moved into the rental unit on May 15, 2014 which is the day the Tenant believes the tenancy started. The Landlord said he rented the unit to the Tenants starting May 1, 2014 and the Landlord said Tenants said they would move in on May 15, 2014. The Parties agreed the Tenants paid the first month's rent on April 27, 2014 in the amount of \$2,000.00. Rent was \$2,000.00 per month and the Tenants paid a security deposit of \$1,000.00 on April 18, 2014. No condition inspection reports were completed on move in or move out.

The Tenant said they moved into the rental unit on May 15, 2014 and things were fine until the first week in June, 2014 when it started raining. As a result of the rain the Tenant said the roof leaked. The Tenant said they told the Landlord about the leak on June 3, 2014 and the Landlord did not do anything, so on June 7, 2014 the Tenants told the Landlord by phone they were moving out of the unit at the end of June, 2014. The Tenant provide a copy of a text message dated June 15, 2014 indicating they were moving out of the rental unit at the end of the month. The Tenant said the leaky roof is why they ended the tenancy.

The Landlord said he had the roof inspected and there were no leaks, but he did find a leak in one of the toilets which he repaired.

The Landlord continued to say the Tenants did not give him proper written notice to end the tenancy and he was unable to rent the unit for July 2014. Consequently the Landlord said he has made an application for lost rental income of \$2,000.00 for July 2014. The Landlord continued to say that he advertised the unit on the internet starting June 15, 2014 and he showed the property 3 or 4 times in June, 2014 and several time in July, 2014. The Landlord said he rented the property to a new tenant starting July 31, 2014. The Landlord said his claim for lost rental income for July, 2014 is because the Tenants did not give him proper notice to end the tenancy.

The Tenant said they have made an application to recover their security deposit of \$1,000.00 as there was no damage to the rental unit and they left the unit clean. As well the Tenant said they are requesting the return of ½ their May, 2014 rent in the amount of \$1,000.00 as they only move into the rental on May 15, 2014. In addition the Tenant said the Landlord owes the Tenants \$245.90 for cable costs as the Landlord used their cable connection for cable vision in the Landlord's shop on the property. The Tenant did not submit any supporting evidence for the cable cost claim. The Tenant said their total claim is \$2,245.90 plus the filing fee of \$50.00.

The Tenant continued to say that she believes the rental unit was rented for July, 2014 but she has no evidence to support this claim except that she thought the Landlord told her the unit was rented for July 1, 2014. The Landlord said the potential tenant he had

for July, 2014 did not rent the unit as of July 1, 2014. The Landlord continued to say the unit was rented starting July 31, 2014. The Tenant said she believes the Landlord did rent the unit for July, 2014 and he is trying to get rent from her and from the new tenant.

In closing the Tenant said she does not believe the Landlord is entitled to their damage deposit as the unit was left undamaged and clean. As well the Tenant requested ½ the May, 2014 rent to be returned as they did not live in the unit for the first 15 days of May, 2014 and the Tenant said the Landlord owes them \$245.90 in cable costs.

The Landlord said in closing that the Tenants did not give him proper notice to end the tenancy, he tried to rent the unit to new tenants as soon as he knew the Tenants were moving and he was unable to rent the unit for July, 2014. As a result the Landlord said the Tenants are responsible for the July, 2014 rent of \$2,000.00. The Landlord also requested to recover the filing fee of \$50.00 for the application.

Analysis

Section 16 of the Act say the rights and obligations of a landlord and a tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

As the Tenant is requesting the return of ½ of the May, 2014 rent, I find that the Tenant has acknowledged that the tenancy started May 1, 2014. As well the May, 2014 rent was paid on April 27, 2014 in the amount of \$2,000.00, which indicates the tenancy could have started on May 1, 2014. Consequently, I accept the Landlord's testimony that the tenancy started on May 1, 2014. Whether the Tenants lived in the unit or not the tenancy started on May 1, 2014 and that is when the obligations of both Tenants and the Landlord began. These obligations include the Tenants paying the rent as due for the month of May, 2014 whether or not they occupied the unit for the full month. Therefore I find the Tenants have not established grounds to recover the rent paid from May 1, to May15, 2014. I dismiss the Tenants' claim for rent recovery in the amount of \$1,000.00.

Further it is the applicants' responsibility to prove a loss in a monetary claim. The Tenants have claimed \$245.90 for cable costs that they say is the responsibility of the Landlord, but the Tenants have not provided any evidence to prove the loss or to verify the loss with a receipt. Consequently I dismiss the Tenants claim for \$245.90 for cable costs due to lack of evidence.

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a tenant may end a period term tenancy with written notice not earlier than one month prior to the date that rent is payable or with the written agreement of the Landlord.

In this situation the Tenants gave the Landlord verbal notice on June 7, 2014 and a text on June 15, 2014 saying that they were moving out at the end of the month or June 30, 2014. This is not proper notice to end a tenancy.

Further both parties agreed that the Landlord showed the unit in June, 2014 and I accept the Landlord testimony that he advertised the unit for rent starting June 15, 2014 and showed the property again in July until he found a new acceptable tenant. Consequently I find the Landlord acted responsibly and was reasonable in minimizing or mitigating his loss.

Therefore I find the Tenants did not give the Landlord proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent. Consequently, I find the Tenants are responsible for the rent of \$2,000.00 for the month of July, 2014.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 2,000.00	
	Recover filing fee	\$ 50.00	
	Subtotal:		\$ 2,050.00
Less:	Security Deposit	\$ 1,000.00	
	Subtotal:		\$ 1,000.00
	Balance Owing		\$ 1,050.00

As the Tenants have not been successful I order the Tenants to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

A Monetary Order in the amount of \$1,050.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants application is dismissed without leave to reapply.

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 14, 2015

Residential Tenancy Branch

