



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The Residential Tenancy Act permits a party to serve another by mailing, by registered mail to where the other party resides or to the forwarding address provided by the other party. On December 19, 2014 the landlord mailed a copy of the Application for Dispute Resolution/Notice of Hearing, by registered mail to the forwarding address provided by the tenants and to the address the tenants moved to. The Act provides that it is deemed received 5 days later. One of the documents was returned with the notation "refused." The other three documents were not claimed and returned. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail.

The landlord further testified she mailed a copy of the Amended Application for Dispute Resolution/Notice of Hearing addressed to the forwarding address provided by the tenants and the address where they reside on February 17, 2015. The Act provides that it is deemed received 5 days later. I determined there was sufficient service of the Application for Dispute Resolution/Notice of Hearing despite the fact they refused to pick up their registered mail. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The property was originally owned by a third party. The present landlord purchased the property with possession in early November. The landlord produced a written tenancy agreement that provided that the tenancy would start on November 1, 2014, continue for one year less a day and end on October 31, 2015. The rent was \$1500 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$750 on November 1, 2014. .

The suite on the floor immediately below the rental unit experienced a problem with leaking. The strata company investigated and the landlord and a restoration company were called. It was determined that the tenants had damaged the sink drain causing the leak which spread to the suite below. The tenant initially denied the restoration company access. However, the restoration company eventually gained access but the tenants objected to the dehumidifiers. The tenants vacated the rental unit on or about December 10, 2014 and returned the keys on December 16, 2014. The tenants failed to pay the rent for December.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher

than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$1500 for non payment of rent for December 2014. The tenants failed to pay the rent when due. They remained in the rental unit for a period of time in December.
- b. I determined the landlord is entitled to \$1500 for loss of rent for January 2015. The parties entered into a fixed term tenancy agreement. The tenants are obliged to pay the rent for that period subject to the breach of a material term of the tenancy agreement caused by the landlord and/or the landlord's obligation to mitigate. There is insufficient evidence on which I can determine the leak amounted to the landlord's breach of a material term of the tenancy agreement. I determined the landlord has acted reasonably but has not been able to re-rent the premises
- c. Based on the evidence presented I determined the tenants' negligence or misconduct caused the leak to the drain area. Further, the tenants failed to give the landlord sufficient access to fix the problem in a prompt manner. I determined the landlord is entitled to \$1000 for the insurance deductible.
- d. I dismissed the landlord's claim for the cost of changing the locks when the tenants originally took possession. Section 25 of the Residential Tenancy Act provides as follows:

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

- (a) 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
- (b) pay all costs associated with the changes under paragraph (a).

The tenants had a right to request that the locks be changed. This claim is dismissed.

- e. I determined the landlord is entitled to \$126 for the cost of re-keying the locks after the tenants left as they failed to relinquish the keys to the landlord after they left. The tenants did not return the keys until after the landlord had incurred the expense of re-keying the lock.
- f. I determined the landlord is entitled to \$261.84 to replace the toilet damaged by the tenants.
- g. I determined the landlord is entitled to \$1023.75 for the cost of fixing damage to the floor caused by the tenants.
- h. I dismissed the landlord's claim for the 8 registered mail set out. This refers to the cost of litigation. The only jurisdiction an arbitrator has with respect to costs is the cost of the filing fee.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$5411.59 plus the \$100 filing fee for a total of \$5511.59.

Security Deposit

I determined the security deposit plus interest totals the sum of \$750. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$4761.59.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: March 04, 2015

Residential Tenancy Branch

