



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlords said they served the Tenants with the Application and Notice of Hearing (the "hearing package") by posting the hearing package on the door of the Tenants' residents on August 29, 2014. Based on the evidence of the Landlords, I find that the Tenants were not served with the Landlord's hearing package as required by s. 89 of the Act. The Tenants said they received the Landlords' hearing package and they have reviewed the documents. As the Tenants have received the hearing package and are prepared to proceed with the hearing I accept the Landlords' service of the hearing package. The hearing continued with all parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for the loss or damage and if so how much?
5. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on March 1, 2012 as a fixed term tenancy with an expiry date of February 28, 2013 and then continued on a month to month basis. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$600.00 on April 1, 2012 and a pet deposit of \$20.00 on March 1, 2012. Both parties agreed the pet deposit of \$20.00 was returned to the Tenants on August 2, 2014.

The Landlord said the Tenants moved out of the rental unit on August 1, 2014 without written notice to end the tenancy to the Landlord. The Tenants said they were told verbally by the Landlords that the Landlords' were moving into the unit August 1, 2014 so that is the date they moved out. Both parties agreed no written notice to end the tenancy was given by either the Tenants or the Landlords. The Landlord said they moved into the rental unit on August 2, 2014.

The Landlord said a move in condition inspection was completed on March 1, 2012 and a move out inspection was completed on August 2, 2014. The Tenants said that they did condition inspections of the unit on move in and move out, but report was done on the old report that was completed for the previous tenancy. The Tenants said their signatures are on the report but are not in the place provided for signatures as the previous tenants signatures are on the report. As well the Tenant said there are comments on the report that pertain to both tenancies. The Tenants said they do not agree with the move out condition inspection report. The Tenants said the move out report is signed by the previous tenants. The Landlord said she didn't have a new condition inspection report so she used the report from the previous tenancy because that is all she had.

The Landlord said that the Tenants did not pay \$1,200.00 of rent for July, 2014 and the tenancy ended August 1, 2014; therefore the Tenants are responsible for the July, 2014 rent of \$1,200.00. The Tenants agreed the tenancy ended August 1, 2014 but they said they were told by the Landlord to move out; therefore the Tenants do not believe they are responsible for the August, 2014 rent. As well the Landlord said the Tenants left the house in an unclean condition and there were repairs that were need to be done because of damage the Tenants caused. The Landlord said they have cleaning costs and estimated cleaning cost of \$433.61 and the Landlord provided an itemized list of the cleaning claims. Further the Landlord said the Tenants broke two drawers in the frig purchased during the tenancy. The Landlord is claiming \$134.29 to replace the drawers and the Landlords submitted paid receipts to support their claim. As well the Landlord said they have estimated a claim of \$30.00 for potential damage to the shower and the Landlord is requesting ½ the photocopying costs to prepare their application in the amount of \$55.07.

The Landlords also requested to recover the \$50.00 filing fee for their application.

The Tenants said the tenancy did end on August 1, 2014 but they were told they had to move out by August 1, 2014 by the Landlords during a meeting in May, 2014. The Tenants submitted two emails that make reference to ending the tenancy, but the emails are not definitive about ending the tenancy. The Tenants said they did not want to move out so they do not feel they are responsible for the July 2014 rent of \$1,200.00. Further the Tenants said they cleaned the rental unit when they moved out except for items that the Landlord would be responsible for. The Tenant said they are not responsible to dismantle the range hood and clean it or take the microwave apart to clean it. The Tenants said they said they vacuumed the floors and wiped down the counters and other surfaces. The Tenants said they believe the unit was empty and cleaned when they moved out. The Tenants said they do not feel the Landlords' claim of \$433.61 for cleaning is proven or justified.

The Tenants continued to say they don't know if the drawers in the frig were broken during the tenancy. The male Tenant said he cleaned the frig at the end of the tenancy and he did not think the drawers were broken. The female Tenant said she had not noticed if the drawers in the frig were broken or not. The male Tenant said he does not think they are responsible for the cost of \$134.29 for the broken drawers in the frig.

In closing the Tenants said they felt bullied by the female Landlord at the move out inspection and now Landlords are adding damages and costs to their application that were not talked about or agreed to at the meeting at the end of the tenancy. The male Tenant said the Landlords' claims are not on the move out inspection.

In closing the Landlord said she was sorry that she lost her temper at the meeting at the end of the tenancy, but she was frustrated with the condition of the rental unit and she had just driven a long ways. In any case the Landlord said the Tenants owe the July, 2014 rent of \$1,200.00 as the tenancy ended on August 1, 2014, the Tenants left the rental unit in an unclean state and there are damages that the Tenants should be responsible for. The Landlord said their claim is \$2,252.97 plus the filing fee of \$50.00.

A settlement opportunity was offered to the parties but the Tenants declined the Landlords' offer so the parties agreed to go to the decision by the Arbitrator.

Analysis

Section 26 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 periodic term tenancy not earlier than the one month prior to the date that rent is payable or with the agreement of the Landlord and it must be in **writing**. (note that emails unless confirmed by all parties are not considered notice in writing)

As no written notices to end the tenancy were given, I find the Tenants ended the tenancy on August 1, 2014 by moving out. The Tenants said they did not want to move out but did so as a result of a verbal request by the Landlords. If the Tenants wanted to continue the tenancy they could have stayed in the rental unit until the Landlords issued a written notice to end the tenancy or if the parties entered into a written mutual agreement to end the tenancy. Consequently the Tenants did not give the Landlords 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; therefore I find the Tenants are responsible for the rent of \$1,200.00 for July, 2014. I award the Landlord's \$1,200.00 representing unpaid rent for July, 2014.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections in accordance to the Act and regulations to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

Section 24 and 36 of the Act say that if condition inspection reports are not completed according to the Act and regulations then the landlord's claim against the tenant's security or pet deposits are extinguished.

The condition inspection reports that were completed for this tenancy were completed on a report used for a previous tenancy therefore the information on the report is for two tenancies and is unclear. The Act says a condition inspection report must be completed for each tenancy and it must be completed in accordance to the Act and the regulations. I find the condition inspection reports completed for this tenancy is inadequate and do not comply with the Act or the regulations. A landlord cannot combine two separate tenancies on to one report. Consequently I do not accept the conditions inspection reports for this tenancy and I find the reports to be invalid.

As a result I find the Landlords have not established grounds to be successful on their damage claims. I dismiss the Landlords' damage and cleaning claim for \$433.61, the frig drawer replacement for \$134.29 and the potential shower damage of \$30.00.

With respect to the Landlords' claim for photocopying of \$55.07; these costs are related to the hearing process not the tenancy therefore the photocopying costs are considered an ineligible claim under the Residential Tenancy Act. I dismiss the Landlords' claim for photocopying costs or \$55.07.

As the Landlords have been partially successful in this matter, they are 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 and pet deposit in partial payment of the **rent arrears**. The Landlord will receive a monetary order for the balance owing as following:

	Rent arrears:	\$ 1,200.00
	Recover filing fee	\$ 50.00
	Subtotal:	\$1,250.00
Less:	Security Deposit	\$ 600.00
	Subtotal:	\$ 600.00
	Balance Owing	\$ 650.00

Conclusion

A Monetary Order in the amount of \$650.00 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.

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 24, 2015

Residential Tenancy Branch

