



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed December 23, 2014: MND; MNR; MNSD; O; FF

Tenants' application filed January 17, 2015: MNDC; MNSD; OLC; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of their monetary claim; "other" orders; and to recover the cost of the filing fee from the Tenants.

The Tenants seeks compensation for damage or loss under the Act regulation or tenancy agreement; for return of the security deposit; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

Preliminary Matters

The Landlords' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Landlords' application is dismissed.

The Tenants have sought an Order that the Landlords comply with the Act, regulation or tenancy agreement; however they did not stipulate what Section of the Act, regulation or tenancy agreement they seek compliance with. In any event, the tenancy is over and therefore this portion of their application is dismissed.

Issues to be Decided

1. Have either party provided sufficient evidence to prove their claim for damage or loss under Section 67 of the Act?
2. Are the Landlords entitled to a Monetary Order for unpaid rent for the month of December, 2014, and unpaid utilities?
3. Disposition of the security deposit.

Background and Evidence

Neither party provided a copy of the tenancy agreement in their documentary evidence.

The parties agreed on the following facts:

- ~~There is no written tenancy agreement between the parties.~~
- The Tenants moved into the rental unit on October 26, 2015.
- The Tenants gave the Landlords written notice to end the tenancy on November 25, 2014, effective December 15, 2014.
- Monthly rent was \$1,200.00.
- The Tenants paid a security deposit in the amount of \$625.00 on September 3, 2014, and a pet damage deposit in the amount of \$25.00.

The Landlord KM provided the following testimony:

The Landlords seek a Monetary Order, calculated as follows:

Unpaid utilities	\$625.00
Cost of cleaning the rental unit at the end of the tenancy	\$200.00
Cost to repair walls, change locks, new keys	\$125.00
Damage to furniture, loss of use of phone, long distance charges	\$200.00
Unpaid rent for the month of December, 2014 (Tenants paid ½ of December's rent)	<u>\$625.00</u>
SUBTOTAL	\$1,900.00
Less set off of security deposit and pet damage deposit	<u>-\$650.00</u>
TOTAL	\$1,250.00

KM testified that the parties had agreed that the Tenants would pay for any propane that they used in excess of \$200.00 per month. KM stated that the Tenants used more propane than \$200.00 per month. KM stated that she had calculated that the approximate cost of propane used between October 26 and December 15, 2014 was \$864.85 (\$17.65 per day x 49 days). Based on this figure, she calculated that the prorated amount that the Landlords owed was \$326.66 (\$200.00 per month x 1.63

months). KM stated that the total actual cost to fill the tank between October 26 and December 15, 2014 was \$1,200.00, and therefore the Tenants really owed \$873.54 for propane.

KM testified that the Tenants did not clean the rental unit at the end of the tenancy. She stated that she paid \$384.00 for cleaners to clean the rental unit, but that she is only claiming \$250.00.

KM stated that the Tenants did not return the keys to the rental unit and therefore she had to change the locks.

KM testified that the Tenants damaged the walls in the rental unit.

KM stated that the Tenants borrowed some furniture, which they put outside in a shed. KM testified that the tables were ruined because the shed had leaked.

The rental unit is powered by a generator, with battery backup. KM stated that the Tenants did not leave the generator on and therefore the breakers were blowing. She stated that the Tenants used the batteries throughout the day and ran the dishwasher twice a day. KM stated that the use of a dishwasher is not recommended when a building is powered by a generator.

KM testified that the Tenants “stole her phone” and made long distance charges. She stated that the Tenants returned her phone, but not until after they moved out.

The Tenant AM provided the following testimony:

The Tenants seek a Monetary Order, calculated as follows:

Moving costs	\$830.00
Reduced value of tenancy due to lack of electricity, hot water, construction noise, privacy (\$10.00 per day for 1 ½ months)	\$420.00
Return of security deposit and pet damage deposit	<u>-\$650.00</u>
TOTAL	\$1,900.00

AM agreed that they did not provide due notice to end the tenancy, but stated that they moved out on December 13, 2014, because of all of the problems they were having with the power, which were ongoing throughout the whole tenancy. AM stated that they were only able to use the power 4 hours a day. AM stated that they had a wood stove, which the Tenants used as a secondary heat source.

AM disputed all of the Landlords' claim.

AM testified that the Landlords did not do a condition inspection at the beginning or the end of the tenancy. AM stated that the Landlords were supposed to meet them on December 13, 2014, at 4:00 p.m. to do the final "walk through", but the Landlords did not show up. She testified that the Landlords left no instructions with respect to how they were to return the keys and the Landlords' cell phone, so she mailed them back to the rental unit.

AM stated that the Tenants lived in a "construction zone" for the whole of the tenancy because the Landlords did not finish renovations before the Tenants moved in.

AM stated that the Tenants did no damage to the suite and had cleaned it before they left.

Analysis

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities. In this case, both parties are claiming damage or loss and therefore the onus is on each party to prove their own claim.

To prove a loss and have the respondent pay for the loss requires the applicant 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 respondent 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 applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 44 of the Act provides a list of the only ways a tenancy can end. I find that the Tenants did not comply with Section 45 of the Act when they ended the tenancy. I find that the Landlords suffered a loss as a result of the Tenants' failure to comply with Section 45 of the Act. Therefore I allow the Landlords' claim for unpaid rent in the amount of **\$625.00**.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply \$625.00 of the security and pet damage deposits in full satisfaction of their

monetary award. I ORDER that the Landlords return the balance in the amount of \$25.00 to the Tenants forthwith.

With respect to the remainder of the Landlords' claim, I find that the Landlords have not met the burden of proof. There was conflicting testimony on all points, and the Landlords provided no independent evidence to support their claims. No independent witnesses were called to give verbal testimony at the Hearing. No written statements were provided from independent witnesses.

The Landlords provided a list of items for which they seek compensation, but no evidence of the stated worth of those items. For example, the propane tank was not measured at the beginning of the tenancy and no invoices were provided. The borrowed furniture was not described fully, nor was there evidence of its worth. Landlords are required to complete Condition Inspection Reports that comply with the regulation at the beginning and at the end of a tenancy.

For the reasons stated above, I dismiss the remainder of the Landlords' claim.

With respect to the Tenants' claim, I find that they are entitled to compensation for loss of use of the rental unit. The evidence shows that the Landlords did not finish the renovations at the rental unit until after November 17, 2015. AM testified that dishwashers were not recommended when a generator is in use; however, I find that the use of a dishwasher was included in the rent. AM's testimony, particularly surrounding the use of the generator and her calculations regarding the propane usage, was very difficult to follow.

Pursuant to the provisions of Section 67 of the Act, I find that the Tenants are entitled to compensation in the amount claimed, **\$420.00**.

I dismiss the Tenants' application to recover the cost of the movers. The Tenants did not follow the provisions of Section 45(3) of the Act, which provides: "If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice." This portion of their claim is dismissed.

The security deposit and pet damage deposit has been partially extinguished pursuant to the provisions of Section 72 of the Act. I have ordered that the Landlord return the remaining **\$25.00** to the Tenants.

Both parties have been partially successful and I order that the parties each bear the cost of filing their applications.

Conclusion

The Landlords' application for a monetary award for unpaid rent in the amount of **\$625.00** is granted. **I order that the Landlords apply a portion of the security deposit in total satisfaction of their monetary award.**

The Tenants are hereby provided with a Monetary Order in the amount of **\$445.00** for service upon the Landlords. 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: April 13, 2015

CORRECTED May 1, 2015

Residential Tenancy Branch

