



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MNDC, MNR, MNSD, OPR MND

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$3056.17 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated October 8, 2015
- b. A monetary order in the sum of \$1950
- c. An order that the tenant recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was personally served on the Tenants on October 8, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

The tenants vacated the rental unit at the end of October. As a result the tenants withdrew their claim for an order cancelling the 10 day Notice to End Tenancy and the landlord withdrew its claim for an Order for Possession.

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?
- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord and LG entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2014, end on June 30, 2015 and become month to month after that. The tenancy agreement provided that the rent was \$1950 per month payable in advance on the first day of each month. The previous tenant paid a security deposit of \$975 and a pet damage deposit of \$975 on May 6, 2014.

On April 30, 2015 the lease was assigned to the tenants effective May 1, 2015.

A term of the assignment was that the tenants were responsible for paying the security deposit and pet damage deposit to the previous tenant and the tenants would accept the suite pursuant to the move in inspection.

All parties agreed to conduct an inspection on May 1, 2015. The tenants were in transit and were delayed. They did not attend. The previous tenant failed to attend. The landlord completed the inspection and sent an e-mail to the parties suggesting the tenants should withhold some of the security deposit as the rental unit was not sufficiently cleaned. The tenants paid the security deposit and pet damage deposit to the previous tenant.

Shortly after moving in the tenants advised the landlord that the carpet in the den of the suite smelled on cat urine. A dispute arose between the parties as to who was responsible to pay for the cost of the replacement of the carpet. The room was measured in late May. However, the carpets were not replaced until October 7, 2015.

At the end of September the tenants gave the landlord written notice they were vacating the rental unit at the end of October.

The tenants withheld the rent for October. The rental property was sold in October with the new owners taking possession on November 3, 2015.

Landlord's Application:

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.

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

- a. I determined the landlord has established a claim in the sum of \$1950 plus a \$25 NSF fee for a total of \$1975 for non payment of the rent for October 2015. The tenants are obliged to pay the rent even where the landlord may have failed to comply with the Act. Section 26(1) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The tenants do not have a right to deduct all or a portion of the rent as they have not made an emergency repair and they do not have an order from an arbitrator permitting them to deduct a sum from the rent. The allegations made in their letter dated September 29, 2015 may be grounds for an application for a monetary order for the reduced value of the tenancy but they do not give the tenants the right to withhold the rent.

- b. I determined the landlord is entitled to \$198.19 for the cost of cleaning. I am satisfied based on all of the evidence presented that that tenants failed to adequately clean the rental unit. The tenant admitted she failed to vacuum the carpets and failed to clean them.
- c. I dismissed the landlord's claim of \$20 for the cost of a visitor parking pass. The tenant testified it was left in a cupboard.

- d. The landlord claimed the sum of \$729 for the cost of replacing the carpet in the den. I am satisfied the damage was caused by the previous tenant. Further, the landlord agreed he would cover this cost. In my view this agreement is binding and the landlord can no longer bring such a claim.
- e. I dismissed the landlord's claim for the cost of mirror replacement as the landlord failed to prove they suffered this loss. The rental unit has been sold. The landlord failed to prove the work was done prior to the sale or that there has been a reduction in the sale price.

In summary I determined the landlord has established a claim against the tenants in the sum of \$2173.19 plus the sum of \$50 in respect of the filing fee for a total of \$2223.19.

Security Deposit:

I determined the security deposit and pet damage deposit totals the sum of \$1950. I ordered the landlord may retain this sum thus reducing the amount outstanding to the sum of \$273.19.

Tenant's Application:

The Application for Dispute Resolution filed by the tenants is confusing as they failed to provide details of their claim. At the start of the hearing they stated they were seeking an order for the return of their security deposit and pet damage deposit. They were also seeking an order that they be permitted to withhold the rent for October.

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

- a. The tenants filed their Application on October 13, 2015. At that time they were still in possession of the rental unit. They did not give the landlord their forwarding address in writing until November 3, 2015. The landlord filed an Application for Dispute Resolution on November 16, 2015. I dismissed the tenants' claim for the return of the security deposit and pet damage deposit. The landlord filed a claim within 15 day of receiving the tenants' forwarding address in writing. The tenant failed to attend the post tenancy inspection despite given 3 opportunities and their right to the security deposit was extinguished because of this failure. The landlord has established a claim that exceeds the security deposit and pet damage deposit and I have order that the landlord can retain those sums in partial satisfaction of the landlord's monetary claim.
- b. The tenant sought an order they be permitted to withhold the rent for October. Section 26(1) does not give the tenants this right. This claim is dismissed.

c. As the hearing progressed it appeared the tenants were seeking compensation for an alleged breach of the covenant of quiet enjoyment based on their complaints set out in their letter of termination dated September 29, 2015 as follows:

- The landlord did not complete a proper out-inspection with the previous tenant.
- The landlord did not complete a proper in-inspection when we took over the lease assignment.
- Damages to the “den” via the previous tenant have been left unrepaired; therefore the room has not been usable for the five months of our tenancy.
- The landlord booked numerous viewings for sale of the condo where we were not given proper notice of entry.
- The landlord has requested repeatedly more than the allowed amount of viewings per week for sale of the condo.
- The landlord booked viewing without the landlord or the landlord’s representative present.
- The landlord attempted to charge a rent increase without proper notices of rent increase.
- The landlord attempted to charge the aforementioned rent increase retroactively by multiple months.
- The landlord has requested we sign a drafted notice to vacate which asks us to sign agreement to stipulations which are not pursuant to the BC Tenancy Act regarding providing legal notice to vacate by a tenant.

Despite the failure of the tenants to properly set out this claim I determined that it was appropriate to consider it as the landlord was prepared and presented evidence in response. After considering the disputed evidence I determined the tenants failed to establish a claim for the following reasons:

- I do not accept the submission of the tenants blaming the landlord for problems with the inspection. The tenants had a duty to attend the inspection and failed to do so. This is not the landlord’s fault
- The tenants complained the den was unusable. The landlord responded to the tenants’ complaints and it was measured for a new carpet at the end of May. The tenants failed to give the landlord’s access to complete the job until the end of October. I do not accept the submission of the tenants they failed to give access because of the concern they would be responsible to pay. It was open to either party to file an application with the Residential Tenancy Branch to have this matter determined.

- The tenants complained about the number of showings and the failure to give adequate notice. The testimony of the tenant as to the number of showings was not precise. The Residential Tenancy Act provides that a landlord does not have to give notice if the tenant consents to them entering. Once the tenants complained to the landlord an arrangement was worked out with the real estate agent by the landlord to give proper notice.
- There is no basis for the tenants' complaint about rent increases as the tenants refused to pay the increase and the landlord accepted this.
- These complaints individually and in their totality do not amount to a breach of the covenant of quiet enjoyment which would give rise to a claim for compensation.

In summary the tenants failed to prove the landlord breached the covenant of quiet enjoyment and as a result the tenants' application is dismissed without leave to re-apply.

Conclusion:

In summary I ordered the landlord shall retain the security deposit and pet damage deposit which totals \$1950. In addition I ordered that the tenants pay to the landlord the sum of \$273.19. I ordered that the application of the tenants be dismissed.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the tenants 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: December 09, 2015

Residential Tenancy Branch

