



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF, CNR, O, ERP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing packages submitted by the other party. As both parties have attended and have confirmed receipt of the notice of hearing packages served by the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

The tenants confirmed receipt of the landlord's submitted documentary evidence with the landlord's notice of hearing package. The landlord confirmed receipt of the tenants' first documentary evidence package, but that she did not receive the second documentary evidence package. The tenants provided affirmed testimony that the second package was placed in the landlord's mailbox, but is unable to provide any supporting evidence for service. As such, I find that the tenants' were properly served with the landlord's submitted documentary evidence and that the landlord was properly served the tenants' first documentary evidence package as per sections 88 and 89 of the Act. The tenants' second documentary evidence package was disputed by the landlord as not being received from the tenant. The tenants were unable to provide any supporting evidence that the late evidence package was properly served to the landlord. As such, the tenants' second documentary evidence package is excluded as the tenants have failed to provide sufficient evidence to satisfy me that it was served as per section 88 and 89.

Preliminary Issue(s)

At the outset, both parties confirmed that discussions between the two parties have led to a mutual agreement to end the tenancy. The tenants confirmed that an agreement had been reached with the landlord.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

1. The tenants agreed to cancel their application for dispute to cancel the 10 Day Notice, an order for the landlord to comply with the Act, regulation or tenancy agreement and an order for emergency repairs.
2. The landlord agreed to withdraw her application for an order of possession.
3. Both parties mutually agreed to end the tenancy on August 1, 2016.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution regarding possession of the rental unit.

The landlord also gave notice that she was seeking to lower her monetary claim from \$2,331.67 to \$965.74.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on April 1, 2016 on a fixed term tenancy of 6 months and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,400.00 payable on the 1st day of each month and a security deposit of \$700.00 was paid on April 1, 2016.

The landlord seeks a monetary claim of \$965.74 which consists of:

\$700.00	Recovery of Plumbing Costs due to plugged toilet
\$265.74	Unpaid Utilities

The landlord stated that the tenants caused the toilet to be plugged which required a professional plumber to unplug the pipes. The landlord also stated that the tenants failed to pay outstanding utilities which the tenants are responsible for as part of the tenancy.

The tenants disputed the landlord's claim regarding the plugged toilet, but have conceded that there were unpaid utilities and that the tenants are not disputing them.

Both parties confirmed that the landlord was notified of a plugged toilet on July 5, 2016 and that a plumber was called to the rental premises the next day to service the premises. The landlord argued that the tenants were responsible for the drain and toilet stoppage. The landlord stated that the blockage required an afterhour's visit by the plumber totalling \$703.00 based in part of the submitted invoice dated July 6, 2016 from Plumbing Contractor. A description in the invoice stated,

-Customer informed technician that it was a recurring issue.

-Removed toilet and ran auger through toilet flange to 40' and hit blockage...

*-Ran auger several times and removed blockage; standing water subsided...
-Recommendation: Scope line out to City to ensure no structural issues or root intrusion were present, as this was a recurring issue.*

The tenants dispute the landlord's claims stating that there is evidence that the blockage/stoppage was caused by the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case both parties have provided conflicting evidence and that neither party has provided any conclusive evidence as to the cause for the blockage/stoppage for plumbing. As such, I find that the landlord has failed to provide sufficient evidence to satisfy me that the tenants were responsible for the blockage/stoppage. This portion of the landlord's claim is dismissed without leave to reapply.

As the tenant has conceded the \$265.74 in unpaid utilities, the landlord is entitled to this portion of the claim.

I find that as the landlord has only been partially successful in her application, I grant the recovery of \$25.00 for the filing fee.

The landlord has established a total monetary award of \$290.74.

In offsetting these claims, I find that the landlord may withhold \$290.74 from the currently held \$700.00 security deposit leaving a balance of \$490.26 to be returned to the tenants in accordance with the normal end of tenancy rules.

Conclusion

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on August 1, 2016.

The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme 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: August 4, 2016

Residential Tenancy Branch