



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

At the start of the hearing the landlords' monetary claim was reviewed. The calculation of the claim was somewhat vague; however, the tenants acknowledged a claim made for unpaid January, March and April 2016 rent.

There was no detailed calculation provided, setting out a claim for damage to the rental unit.

In the absence of a detailed calculation of a claim beyond the agreed sum in dispute for rent, no other matters, outside of the security deposit, will be considered. In accordance with the Rules of Procedure a party is required to clearly set out a claim at the time the application is submitted, so that the respondent has an opportunity to prepare a rebuttal. Therefore, I find that the landlord has leave to reapply in relation to any matters not considered in this application, including damage.

The tenants said they had made a claim against the landlord. There was no evidence before me that an application had been submitted by the tenants.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid January, March and April 2016 rent?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced in October 2011. A copy of the tenancy agreement supplied as evidence indicated rent was \$2,500.00 per month, due on the first day. The parties agreed that at some point in 2015 rent was reduced to \$1,800.00. The landlord is holding a security deposit in the sum of \$1,250.00.

A move-in condition inspection report, completed on October 1, 2011, was supplied as evidence.

On March 1, 2016 the tenants gave notice to vacate on April 30, 2016.

During the hearing the parties agreed that during the first week of May 2016 the tenants provided a written forwarding address to the landlords', sent via text message. The tenants also supplied evidence that the forwarding address was delivered to the landlord via registered mail sent on May 19, 2016. That mail was delivered on June 6, 2016. The landlord filed claiming against the deposit on June 9, 2016. A copy of the note, providing the address and return of the deposit was supplied as evidence.

The landlord said they had an agreement with the tenants to meet at the unit to complete the move-out condition inspection. An April 29, 2016 email supplied as evidence indicates that the tenants had agreed to meet on the Sunday afternoon (May 1, 2016) to work on a schedule for clean-up. The tenants replied on April 29, 2016 indicating the male tenant had several days off that week and that the tenants would return to finish up the yard work in the next week.

The landlord said they went to the property on May 1, 2016 and met with the female tenant. The tenants had vacated the home. Upon inspection shortfalls were found, so the tenant agreed to return during the next week to complete clean-up. The tenants submit that only the outside of the home was inspected, not the inside.

The landlord said the tenants were told that they could arrive for a final inspection at any time on May 6, 2016, as the landlord would be on the property for the whole day. After May 3, 2016 the tenants would not answer their phones. On May 4, 2016 the landlord sent a text message to the male tenant to confirm the inspection. The tenant did not respond. The landlord remained on the property until May 7, 2016, during which time the tenants did not return.

The female tenant said that the landlord did not ask to meet with them at the end of the tenancy. Referring to the landlords' assertion an agreement had been reached to meet

on May 6, 2016, when asked, the female tenant stated “at this time I do not remember that”.

The landlord has claimed unpaid rent in the sum of \$200.00 for January 2016 and \$1,800.00 for each of March and April, 2016.

The tenants confirmed that rent was not paid in March or April, 2016. The female tenant could not recall if the \$200.00 owed for January 2016 was included with the payment made in February 2016. Rent was paid by direct deposit to the landlord. The landlord supplied a March 21, 2016 email sent to the tenants, reminding the tenants they had yet to pay all of January rent owed.

The female tenant said that April 2016 rent was not paid as the landlord told the tenants the property would be sold. The tenants believe they are entitled to compensation equivalent to one months' rent. The tenant said they were told that they must vacate.

The tenants referenced a February 22, 2016 letter issued by the landlord, informing the tenants the landlord would be at the property with a realtor. The tenants were warned they would need to locate another farm for their market garden that spring. The landlord also warned the tenants that without notice by the tenants ending the tenancy the landlord might issue an eviction for repeated late payment of rent.

Analysis

Based on the evidence before me I find that the tenants were reminded on March 21, 2016 that not all of January rent had been paid. This provided support for the landlords' submission that not all of the rent had been for January, 2016. Further, the tenants submitted they could not recall if that rent had been paid or not. As a result I have preferred the landlords' testimony, supported by the email. The tenants have confirmed they did not pay March or April 2016 rent.

In relation to the tenants' submission that April rent was not payable, I find that in the absence of a two month Notice issued for the reason of a confirmed sale of the property, that the landlord was not required to provide any compensation to the tenants pursuant to section 49 of the Act.

Therefore, I find that the tenants have not paid rent in the amount of \$200.00 for January 2016 and \$1,800.00 for each March and April, 2016 and, pursuant to section 67 that the landlord is entitled to compensation in that sum.

I have considered the disputed testimony in relation to the move-out condition inspection report. I find that the parties had agreed to meet on May 1, 2016 and that, in fact that did occur. The female tenant met with the landlords' to carry out an inspection. The tenancy had ended and the landlord had expected vacant possession.

I found the email sent on April 29, 2016, supported by testimony given during the hearing, provide evidence that an inspection of the property was completed on May 1, 2016. I am convinced, on the balance of probabilities, that the tenants had requested more time to prepare the property. This is supported by the tenants emails sent on April 29, 2016, in response to the landlords' request they meet on May 1, 2016.

I found the landlords' testimony reliable and consistent and accept that when meeting with the female tenant a request was made to meet again on May 6, 2016 to finalize the inspection. The tenants could have arrived at any time on that date, but did not do so. Further, the tenants did not respond to a text message sent by the landlord on May 4, 2016 or answer calls made by the landlord, in an attempt to communicate with the tenants.

Therefore, I find that the landlord complied with section 35(2) of the Act by meeting on May 1, 2016 in an attempt to complete the inspection and by requesting an inspection on May 6, 2016. The tenants had vacated and were not responding to the landlord; further attempts to reach the tenants failed, satisfying me that multiple attempts were made by the landlord to arrange a final inspection.

I find pursuant to section 31(1)(b) of the Act that when the tenants failed to attend at the rental unit on May 6, 2016 they extinguished their right to request return of the security deposit. However, this does not result in a windfall to the landlord. Therefore, the landlord was not required to apply claiming against the security deposit within 15 days of receipt of the written forwarding address given during the first week of May 2016. The tenants extinguished the right to request return of the deposit when they failed to attend the inspections during the first week of May 2016.

I find pursuant to section 72 of the Act that the landlord may deduct the value of the security deposit from rent due to the landlord.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary order for the balance of \$2,650.00. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation for unpaid January, March and April 2016 rent in the sum of \$2,800.00.

The tenants' extinguished the right to request return of the security deposit.

The landlord is entitled to retain the tenant's security deposit in partial satisfaction of the monetary claim.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 07, 2016

Residential Tenancy Branch