



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WHITE CASTLE VENTURES, INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenants breached an agreement with the landlord; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served to a person nominated as an agent for each of the tenants, by registered mail on July 28, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The documents were not collected by the tenants' agent and returned to the landlord. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the

tenants or their agent, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the tenants' security deposit?

Background and Evidence

The landlord testified that this tenancy started on October 20, 2015 for a fixed term tenancy that was not due to end until August 31, 2016 and at that time the tenants were required to vacate the rental unit. The landlord found that the rental unit had been abandoned on July 01, 2016. Rent for this unit was \$1,475.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$737.50 on October 18, 2015.

The landlord testified that he received an email from a person who notified the landlord that she was now representing both of the tenants and that all communication with the tenants must stop. The landlord then communicated with this representative and served her all documents for this hearing. A copy of the email has been provided in documentary evidence.

The landlord testified that he and his wife went to the unit on July 01, 2016 to see the tenants. They knocked on the door but received no response. The landlords opened the door and found the unit had been abandoned by the tenants. The tenants had paid rent for June but no rent was received for July, 2016. The unit had been left in a terrible

condition with garbage and abandoned belongs left in the unit and yard. The unit was dirty and some repairs were required. This work took a week to complete; however, the landlord did advertise the unit for rent immediately and found new tenants for July 15, 2016. Consequently, the landlord seeks to recover a loss of rent for the first half of July to an amount of \$737.50 as the tenants remained responsible for the rent for the remainder of the fixed term or until the unit was re-rented.

The landlord testified that he hired a person to come into the unit to remove all garbage, clean the unit, which took 16 hours, and included the cleaning of all appliances. There was also two trips to the dump, dump fees, costs to reassemble a dismantled closet interior left in pieces by the tenants, costs to replace a light bulb; costs to repair and repaint the walls which had holes and marks on them; costs to clean up the rear yard; and costs to have keys recut as the tenants did not leave the keys. The landlord referred to his photograph evidence showing the condition of the unit and the invoice from the contractor who carried out this work. The landlord seeks therefore to recover the amount of \$890.00 as shown on the invoice.

The landlord testified that the tenants also damaged the plastic holder on the top shelf of the fridge door. The landlord replaced this at a cost of \$30.87 and seeks to recover this amount from the tenants. A copy of the invoice has been provided in documentary evidence.

The landlord testified that the stove was damaged beyond repair. The glass top of the stove was left so damaged and scratched it needed to be replaced. The landlord looked into the cost to just replace the glass top but found it would be cheaper to purchase a used stove instead. This also took into account the weeks a new glass top would take to arrive and the urgency in getting the unit re-rented in order to mitigate the loss of rent. The landlord was able to purchase a used stove for \$350.00 and has provided the invoice in documentary evidence.

The landlord testified that as there were three different tenants in the building, the landlord paid for mail boxes for each tenant with Canada Post. These tenants failed to return their keys for the mail box and the landlord had to purchase new keys via Canada Post. The landlord seeks to recover the cost of these keys of \$29.95 from the tenants. A copy of the invoice has been provided in documentary evidence.

The landlord provided a copy of the Move in and Move out condition inspection reports in documentary evidence. The tenants attended the move in condition inspection of the unit at the start of the tenancy; however, the move out inspection was completed in the tenants' absence when it was found they had abandoned the rental unit.

The landlord seeks an Order to be permitted to keep the security deposit to offset against his monetary claim. The landlord also seeks to recover his filing fee of \$100.00.

Analysis

The tenants or their representative did not appear at the hearing to dispute the landlord's claims, despite having been served a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for a loss of rent; I refer the parties to s. 45 of the Act which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I am satisfied that this was a fixed term tenancy that was not due to end until August 31, 2016 and that the tenants abandoned the rental unit prior to this date. However, as the landlord was able to mitigate the loss by re-renting the unit on July 15, 2016, I find the landlord has established a claim to recover half a month's rent for July, 2016 to an amount of \$737.50.

With regard to the landlord's claim for damage to the unit, site or property; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I also refer the parties to s. 32 (2) and 32(3) of the *Act* which state:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

I am satisfied from the evidence before me that the tenants failed to clean the rental unit, that the tenants failed to remove all belongings or garbage from the rental unit and that there was damage caused to the rental unit which was not repaired by the tenants before the end of the tenancy. Consequently, I find the landlord has met the burden of proof in this matter and I find in favor of the landlord's monetary claim to recover the costs incurred to clean the unit and yard and remove garbage, to carry out minor repairs by his contractor; to replace the keys, to repair the fridge, to replace the stove and to replace the Canada Post mail box keys.

I Order the landlord to keep the security deposit in partial satisfaction of his claim pursuant to s. 38(4)(b) of the *Act*. As the landlord's claim is successful I find the landlord is also entitled to recover the filing fee of \$100.00 pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amounts:

Loss of rent for July, 2016	\$737.50
Award for contractors invoice	\$890.00
Repair to fridge door shelve	\$30.87
Stove replacement	\$350.00
Canada Post mail box keys	\$29.95
Subtotal	\$2,038.32
Plus filing fee	\$100.00
Less security deposit	(-\$737.50)
Total amount due to the landlord	\$1400.82

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,400.82** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: January 25, 2017

Residential Tenancy Branch