



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Review Consideration of the original decision and Order. The original hearing was held on July 25, 2016 to deal with the landlords' application for a Monetary Order for unpaid rent or utilities; 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; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The original decision and order was suspended until the matter has been reheard today.

The tenant JM and landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch. The parties did not confirm receipt of evidence but when asked if they would like to adjourn the hearing today for the tenant to serve the landlord with her application for Review Consideration, Notice of Review Hearing and evidence and for the landlords to serve the tenant with their original hearing documents both parties declined that opportunity and requested that the hearing continued today without either party having sight of the other parties' documentary evidence and that the evidence received by the Residential Tenancy Branch may be considered. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only

the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy stated on October 30, 2013. Rent for this unit was \$875.00 per month due on the 1st of each month. The tenants paid a security deposit of \$437.50 on. The tenants vacated the rental unit on July 01, 2015.

The landlords testified that they served the tenants with their hearing documents to the address provided by the tenants at a previous hearing held on July 31, 2015. The file numbers for that hearing are documented on the front page of this decision. The tenant testified that she had moved from that address at the end of July, 2015 but did not provide a new forwarding address to the landlords as she had a “no contact order” against the male landlord PF. The tenant testified that she served the landlords with the review hearing documents on December 19, 2016 but was not able to do so within the three day time frame as her mother had passed away and she was not at home to receive the decision and Notice of Hearing from the RTB. The landlords testified that they obtained a copy of the Notice of Hearing and the decision from the Service BC office and not the tenants. The tenant provided her current address at this hearing and this was documented by the landlords.

The landlords testified that the tenants failed to pay rent for June, 2015. The tenants were served a 10 Day Notice to End Tenancy on June 02, 2016 in person. The Notice had an effective date of June 16, 2015 and informed the tenants that there was outstanding rent due on June 01, 2015 of \$875.00. The landlords testified that the tenants did not pay the rent within the five allowable days. The landlords testified that the tenants normally paid rent in cash and a receipt was given for each rent payment. The landlords seek to recover the unpaid rent of \$875.00 for June, 2015

The landlords testified that when the tenants vacated the rental unit they left damage to the unit which had to be repaired and the unit was not clean or cleared of debris. Due to the work that had to be carried out, the landlords were unable to advertise the unit or re-rent it during the month of July. The landlords testified that the unit was re-rented through word of mouth on August 01, 2015. The landlords seek to recover a loss of rent for July, 2016 of \$875.00.

The landlords testified that the addendum to the tenancy agreement provides for a late fee to be charged of \$50.00 per month. The landlords therefore seek to recover the late fees for June and July, 2015 of \$100.00.

The landlords testified that a Notice of inspection of the rental unit was posted to the door of the unit on June 27, 2015. The tenants did not respond to this to arrange a day to do the move out inspection so the landlords posted two further notices for a final opportunity for inspection on the door on July 01 and July 03, 2015. The tenants did not attend the move out condition inspection and this was completed in the tenants' absence. The landlords testified that even though the tenants had already vacated the unit they should have seen the last two notices posted to the door of the rental unit as they were seen returning to the unit to collect items such as tomato plants from the yard.

The landlords referred to the inspection reports detailing the damage and cleaning required to the unit. The landlords testified that there were holes in many of the walls of

the unit. These had to be filled, sanded, primed and repainted. The landlords seek to recover \$600.00 for this work and have provided the invoice in documentary evidence.

The landlords testified that the tenants had left garbage in the yard prior to the end of the tenancy. The landlords had received complaints from neighbours that the garbage was smelly and blowing into the neighbours' yards. The landlord paid \$150.00 to clear all corners of the yard as the tenants did not do the work.

The landlords testified that the tenants caused damage to interior doors and it appeared that the doors had been punched. The front door threshold was also damaged. A neighbour informed the landlords that the tenants had a domestic dispute and one had locked the other out of the unit. That tenant had forced the door and the landlords assume this damage to the threshold was caused at that time. The landlords testified that the faucet would not shut off; the toilet was beyond cleaning and had to be replaced. The landlords seek to recover the amount of \$961.00 for these repairs and have provided receipts in documentary evidence.

The landlords testified that a window screen was left torn. The tenants had put an air conditioner in the window and nailed a board up to support the air conditioner. This may have caused this damage to the screen. The landlords seek to recover \$30.24 and have provided the receipt in documentary evidence.

The landlords testified that on the exterior of the unit there is vinyl siding. The corner piece of the siding appeared to have been hit by the tenants' vehicle and was falling off. This was repaired and the landlords seek to recover the cost of \$16.69. A receipt has been provided in documentary evidence.

The landlords testified that the unit had a wood stove. The pipe and duct for the stove had been damaged and has to be replaced. The landlords seek to recover the cost for this work of \$74.43 and have provided a receipt in documentary evidence.

The landlords testified that the unit had a vertical blind which was damaged by the tenants' cat or dog. There was some clear tape on the blind where someone had tried to repair it. The blind was around a year old. The landlords had to replace this blind. The tenants also removed a recycling bin from the property and this had to be replaced. The landlords seek to recover \$21.55 for these items and have provided the receipt in documentary evidence.

The landlords seek an order permitting them to keep the security deposit of \$437.50 in partial satisfaction of their claim. The landlords also seek to recover the filing fee of \$50.00 from the tenants.

The tenant attending the hearing disputed the landlords' claims. The tenant testified that the rent was paid in cash on June 01, 2015 to the landlord PF by the other tenant when he was at home looking after their baby. The landlords did usually provide a receipt for rent payments but failed to do so in June, 2015. The tenant testified that they did not pursue the landlords for the receipt as they had to get a "no contact order" against PF on June 18, 2015. There was a court proceeding due to take place but as the other tenant could not attend the hearing and a stay of the charges against PF remains in place.

The tenant disputed the landlords' claims for a loss of rent for July, 2015. The tenant testified that her photographic evidence shows that the unit was left in a clean condition, that there was only a small hole in one door and that they had cleaned up the driveway. The tenants did not have access to the yard as it was for the use of other tenants and only had a space by the driveway. The holes in the drywall had been patched by the tenants. The tenant testified that the landlords could have re-rented the unit in July.

The tenant disputed the landlords' claim for late fees. Rent was paid on June 01, 2015.

The tenant disputed the landlords' claims that they left the unit damaged or unclean. The tenant again referred to her photographic evidence and states that her pictures

show the unit was clean. It is important to note here that the tenants' photographs have not been reproduced in a manner in which they are legible. The tenant testified that she has no idea what happened to the front door threshold as they never had a dispute where they locked each other out of the unit; the tenant does not know what the landlords are referring to concerning the faucet and if it was leaking this could have been caused by rats in the house which chewed through plumbing; the tenant does not believe the toilet was left so dirty that it had to be replaced; the window screen was not in place at the start of the tenancy and was lying outside. The tenants replaced it at the end and it was not torn; the vinyl corner damage was reported to the landlords months before the tenants moved out as a neighbour's moving truck caused the damage. It was higher than the tenants' head or their cars; the stove pipe was not damaged by the tenants, the stove was illegally installed. The tenant testified that there were no vertical blinds in the unit only a couple of horizontal blinds and some curtains. None of these were damaged during the tenancy; the tenant disputed that they removed the recycling bin from the property.

The tenant testified that the landlord was given an Order from the City not to re-rent the unit in the condition it was in and the landlords had to bring the unit up to code. The tenants had been having issues with not having any water in the unit and the City and the fire department had issues with the stove. The landlords are attempting to get the tenants to pay to bring their unit up to code.

The tenant disputed the landlords' claim to keep the security deposit. The tenant requested that double the security deposit is returned to her.

The landlord MF asked the tenant if she had provided a forwarding address in writing to the landlords. The tenant responded yes via a message and in the mailbox when the tenants left the keys at the end of the tenancy. MF asked the tenant if the landlord had served them with a 10 Day Notice to End Tenancy for unpaid rent on June 02, 2015 and would the landlords have done this if the tenant had paid the rent on June 01, 2015. The

tenant responded she was given the 10 Day Notice on June 04, 2015 after the bylaw officer had spoken to the landlords.

The tenant asked the landlords if they received the keys to the unit. The landlords responded no. The tenant asked the landlords if they got three messages from the tenants asking the landlords to do a move out inspection. The landlords responded no, three notices were left for the tenants to attend the inspection and if the tenants were still in the unit on June 29, 2015 they would have seen the first notice posted to the door on June 27, 2015. The tenant asked the landlord what the result of the City meeting was. The landlord PF responded that this meeting was with regard to the wood stove and whether it was legally fitted. The landlords produced paperwork from when they purchased the unit showing it was legally fitted and an inspection done. PF testified that they did have a non-occupancy order for the unit that was issued on June 10, 2015 and was lifted at the end of July, 2015.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. 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.

In this matter of whether or not the rent for June had been paid by the tenants to the landlords; the tenants have the burden of proof to show that they did pay the rent as claimed. It is important to note that where one party provides a version of events in one

way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

It is my decision that the tenants have insufficient evidence to show that the rent was paid for June. The tenant in attendance testified that it was the other tenant who paid the rent in cash yet that tenant has not appeared to provide sworn testimony that he did in fact pay the rent and no further corroborating evidence has been provided. Consequently I find in favor of the landlords' claim to recover unpaid rent for June, 2015 of **\$875.00**.

With regard to the landlords' claim for a loss of rent for July, 2015 of \$875.00; based on the evidence before me and the landlords own testimony that the unit had a non-occupancy order against it for the month of July, I am not satisfied that the landlords were legally entitled to rent the unit for the month of July and therefore i must dismiss their application to recover a loss of rent for this month.

With regard to the landlords' application to recover late fee for June and July; as I have found that the rent was not paid for June I am satisfied that the landlords are entitled to recover a late fee for June. The addendum to the tenancy agreement stipulates that late fees are \$50.00 per month; however, this clause in the agreement is contrary to the regulations which state

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlords are entitled to recover **\$25.00** in late fees for June 2015. As the tenants were not responsible for the rent for July due to a non-occupancy order then I dismiss the landlords' claim to recover a late fee for July, 2015.

With regard to the landlords' claim for damages, I am satisfied from the evidence before me that the landlords provided the tenants with at least two opportunities to attend the move out inspection. While I accept that some of the tenants' photographs, which I was able to see even though not clearly, do show that the rental unit appeared to be clear it was impossible to see from this evidence if the rental unit was left reasonable clean. It is the tenants' responsibility to ensure that evidence presented for a hearing is legible to enable the Arbitrator to make an informed decision on this matter. As the tenant failed to do so I am persuaded instead from the landlords' inspection reports that the unit had been left unclean and therefore I find in favor of the landlords claim for cleaning costs of **\$300.00**.

I am also satisfied from the evidence before me that the tenants failed to repair all damage caused during the tenancy and that the landlords are entitled to recover the following costs:

Drywall repairs and painting - \$600.00

Recycling bin - \$10.38

Broken corner of siding - \$16.69

Window screen - \$30.24

Dented stove pipe - \$74.43

With regard to the reminder of the landlords' claim for damages and cleaning up of the outside area, I am satisfied that some debris was cleaned up in the outside area; however, I am not satisfied that this garbage was all as a result of the tenants' negligence. It is not recorded on the move out inspection and the invoice shows that the cleanup was done in the back of the rental unit prior to the tenants moving out and part of this cost was to remove a tree for which the tenants would not be responsible.

Furthermore, the tenant testified that they did not have access to this back yard area as part of their rental. As the landlords have insufficient evidence to show that the garage cleaned up belonged to the tenants then I must dismiss this section of the landlords' claim.

With regard to the landlords claim to recover \$961.00 for damage to interior doors, the front door, a faucet and replacing the toilet. The evidence before me shows that one interior door was damaged and one kitchen cupboard door and a closet door in the entrance. There is insufficient evidence to show that the tenants caused any damage to a faucet or that the toilet was so dirty it could not be cleaned by professionals. I therefore limit the landlords' claim to \$200.00.

With regard to the landlords' claim that a blind was damaged; there is insufficient evidence to show that a vertical blind was located in the unit and that this was left damaged. The move out report only referred to dirty blinds and not damaged blinds. I therefore dismiss this section of the landlords' claim.

Consequently, I limit the landlords claim for damages to **\$931.74**.

As the landlords' application has some merit I find the landlords are entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. I Order the landlords to retain the security deposit of **\$437.50** in partial satisfaction of their claim. A Monetary Order has been issued to the landlords for the following amount.

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| Unpaid rent for June, 2015 | \$875.00 |
| Late fee | \$25.00 |
| Cleaning | \$300.00 |
| Damages | \$931.74 |
| Subtotal | \$2131.74 |
| Plus filing fee | \$50.00 |
| Less security deposit | (-\$437.50) |

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| Total amount due to the landlords | \$1,744.24 |
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Conclusion

A review hearing was conducted pursuant to s. 82(2)(b) of the *Act*. Following this review hearing and in pursuant to s. 82(3) of the *Act* I have varied the original decision and Order.

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,744.24**. 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 09, 2017

Residential Tenancy Branch