



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on January 9, 2017 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenants' security deposit; and to recover the filing fee from the Tenants.

An agent for the property company Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenants during the 18 minute hearing. Therefore, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served each Tenant with a copy of the Application and the Hearing Package to the forwarding address provided by the Tenants after the tenancy ended. This was served by registered mail on January 13, 2017. The Landlord provided the Canada Post tracking numbers into evidence to verify this method of service. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenants were deemed served with the Application on January 18, 2017 pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and damages to the rental unit?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy started on January 1, 2015 for a fixed term of one year which was due to expire on December 31, 2016. Rent was payable by the Tenants in the amount of \$1,800.00 on the first day of each month which was then increased during the tenancy to \$1,902.00. The Tenants paid a security deposit in the amount of \$900.00 in December 2014 which the Landlord still holds in trust.

The Landlord testified that at the end of October 2016 she undertook an inspection of the rental unit and discovered that the Tenants had abandoned the rental unit without any notice. The Landlord testified that she did not receive any correspondence from the Tenants until she got an email on January 5, 2017 detailing the Tenants' forwarding address.

The Landlord testified that as the Tenants failed to give any written notice period or informed the Landlord that they were going to be vacating the rental unit, the Landlord lost out on November 2016 rent because it did not allow sufficient time to clean the rental unit, repair damages, and advertise it for re-rental. As a result, the Landlord now seeks to claim November 2016 rent in the amount of \$1,902.00.

The Landlord testified that the Tenants had painted the rental unit different colors which were not repainted before they left. The Landlord provided an invoice for the amount of \$288.75 into evidence to verify the costs being claimed. However, the Landlord acknowledged that she had only made a claim and put the Tenants on notice for the amount of \$203.81 for this portion of the claim which she was eligible for.

Analysis

I accept that the Landlord's undisputed evidence that she received the Tenants' forwarding address on January 5, 2017. Therefore, I find the Landlord filed the Application to keep the Tenants' security deposit within the 15 day time limit provided for by Section 38(1) of the Act.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement whether or not the landlord complies with the Act. Section 44 of the Act does not allow a tenant to end a fixed term tenancy. In this case, I am satisfied by the undisputed evidence before me that the Tenants abandoned the rental unit on or before October 2016 and that this was contrary to the fixed term tenancy the Tenants were bound to.

I accept that in the absence of any written notice given to the Landlord to end the tenancy prematurely, the Landlord was unable to take reasonable steps to mitigate the loss for November 2016 rent. Therefore, I award the Landlord \$1,902.00.

Section 37(2) of the Act requires a tenant to leave a rental unit undamaged at the end of a tenancy. In addition, Policy Guideline 1 on the responsibilities of landlords and tenants states that any changes to the rental unit not explicitly consented to by the Landlord must be returned to the original condition; if the tenant does not, then the landlord may return the rental unit to its original condition and claim the cost against the tenant.

In this case, I accept the Landlord's undisputed evidence that the walls in the rental unit had to be repainted at a cost of \$203.81, which is hereby awarded to the Landlord. As the Landlord has been successful in this matter, I also grant the Landlord the \$100.00 filing fee pursuant to my authority under Section 72(1) of the Act. Therefore, the total amount payable by the Tenants is \$2,205.81 (\$1,902.00 + \$203.81 + \$100.00).

As the Landlord already holds \$900.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining amount of \$1,305.81 (\$2,205.81 - \$900.00). This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants breached the Act by breaking the fixed term tenancy, not paying rent, and not repainting the rental unit. Therefore, the Landlord may keep the Tenants' security deposit and is granted a Monetary Order for the remaining balance in the amount of \$1,305.81. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 28, 2017

Residential Tenancy Branch