



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR; MND; FF

Introduction

This is the Landlord's Application for Dispute Resolution seeking a monetary award for damages to the rental unit and unpaid rent; and to recover the cost of the filing fee from the Tenants.

Both parties attended the Hearing. The Landlord's agent MS, and the Tenants gave affirmed testimony. The Tenants' advocate gave submissions only.

MS testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to each of the Tenants, under separate cover, by registered mail on April 20, 2017. MS provided the tracking numbers for the two registered packages. MS stated that the Tenants did not leave a forwarding address, but that MS got a forwarding address from the BC Court.

The Tenant RM stated that he did not receive the Notice of Hearing documents and was not aware of the Hearing until "about two weeks ago", when the Tenant JH told him about it. RM stated that the Tenants no longer live together.

Canada Post tracking information discloses that JH signed for one of the packages on April 22, 2017, and for the second package on April 26, 2017. Section 89 of the Act provides for the ways documents may be served. I find that the Tenants were not served in accordance with the Provisions of Section 89 of the Act. However, I am satisfied that both of the Tenants were sufficiently served pursuant to the provisions of Section 71(2)(c) of the Act.

RM asked for an adjournment to allow him to provide evidence.

I asked RM what evidence he wished to provide. He stated that he had a video of the Landlord saying that she is selling the house. I advised RM that this was irrelevant to the Landlord's Application. In addition, although neither Tenant provided documentary

evidence, I find that they both had ample opportunity to provide the Residential Tenancy Branch, and to serve the Landlord, with documentary evidence within the time frames set out in the Rules for service of documents.

Therefore, RM's request for an adjournment is denied.

The Tenants' advocate referred to the history of this tenancy and submitted that the Tenants were evicted illegally.

History:

On February 27, 2017, the Landlord's application for a proceeding under Section 55(4) of the Act was considered. In this type of proceeding (Direct Request Proceeding) a decision is made without a participatory hearing. It is based on the written submissions of the landlord and an undisputed 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities. The Landlord's application was granted and she was provided with an Order of Possession and a Monetary Order in the amount of \$1,800.00 for unpaid rent for the month of February, 2017.

On March 2, 2017, the Tenants made an Application for a Review Hearing, submitting that they had paid rent for February, 2017, and therefore the Orders were granted based on fraud. The Tenants' application was granted on March 10, 2017, and the matter was set for a participatory hearing on April 11, 2017, with respect to the Monetary Order only. The following is an excerpt from the March 10 Decision on the Review Application:

Section 79 of the Act provides that where a decision or order relates to an order of possession or a notice to end tenancy for unpaid rent an application for review must be made within 2 days receipt of the decision or order. As the Tenant did not make its application for review within 2 days receipt of the order of possession I find that the Tenant's application in relation to the order of possession was not made in time and as a result I may not consider this part of the application. Further as the Tenant is not clear about what notice was not received by the Tenant and as the evidence does not indicate that the rents were paid within 5 days receipt of the 10 day notice to end tenancy, I find that the Tenant has not provided any evidence that would vitiate the basis for the order of possession.

The application is in time for the monetary order and given the Landlord's signature on what appears to be a receipt for rents paid in February 2017 I find

that the Tenant has provided evidence of fraud and is therefore entitled to a review hearing solely on the monetary order that was granted to the Landlord.

The Tenants were ordered to serve the Landlord with the Notice of Hearing and a copy of the Review Decision.

On April 11, 2017, the Landlord and her agent MS attended the Hearing, but the Tenants did not. MS testified that the Landlord did not receive the Notice of Hearing package from the Tenants and discovered about the Hearing after calling the Residential Tenancy Branch. The Hearing continued in the Tenants' absence. The Tenants were evicted, with the assistance of a bailiff and police, on March 23, 2017. The Landlord was provided with a Monetary Order in the amount of \$3,700.00 for unpaid rent for the months of February and March, 2017, along with recovery of the cost of the filing fee.

I explained to the Tenants' advocate that the matter of the Order of Possession had already been decided and that this Hearing was scheduled to consider the Landlord's claim for unpaid utilities and for compensation for damage and loss. The Decision of April 11, 2017, has been made and I have no authority to revisit that Decision. The reviewing arbitrator found that the Tenants did not make their Application for Review within the time provided in the Act with respect to the Order of Possession and did "not provide any evidence that would vitiate the basis for the order of possession".

Issue(s) to be Decided

Is the Landlord entitled to compensation under the provisions of Section 67 of the Act for loss of revenue for the months of March and April, 2012, unpaid utilities, bailiff's costs, Court filing fees, and damage to the rental unit?

Background and Evidence

This tenancy began on December 1, 2016. The tenancy agreement is a one year fixed term, ending November 30, 2017. Monthly rent was \$1,800.00, due on the 30th day of each month. The Tenants paid a security deposit in the amount of \$900.00. The Tenants were evicted by a bailiff on March 23, 2017.

MS gave the following testimony:

The Landlord's Monetary Order worksheet discloses the following claim:

Unpaid rent for March and April, 2017	\$3,600.00
Unpaid utilities	\$1,495.00
Bailiff fees	\$1,800.00
Supreme Court filing fees	\$120.00
Painting (materials and labour)	\$3,202.50
Materials to replace damaged floors	\$1,770.60
Labour for replacing damaged floors; cost of removing locks and installing new locks (front and back); garbage removal (2 loads); deep cleaning bathroom, kitchen, deck; removing and replacing damaged screen door; removal and disposal of bedroom carpet and living room laminate floor; removal, disposal and replacement of broken fence; supply and install drapes for six windows	<u>\$5,336.88</u>
TOTAL CLAIM	\$17,324.98

The Landlord provided documentary evidence in the form of invoices and receipts for her monetary claim, with the exception of the unpaid utilities and unpaid rent. The Landlord also provided photographs, which MS testified were taken when “the workers were there”.

MS testified that the rental unit was restored, cleaned and re-rented effective June 1, 2017, for \$2,100.00 per month.

MS stated that the Tenants painted the interior walls (including a brick wall and the laminate floor bright green and lime green. He stated that the Tenants were making movies and that a green background is best for superimposing images onto the movie. MS testified that it took one coat of primer and 3 coats of paint to cover the green on the walls and brick.

MS testified that the Tenants had also installed a pool in the living room, and the water from the pool, together with the paint, had ruined the laminate floors beyond repair. The Tenants had a dog and there were dog feces and urine all over the bedroom carpet and deck. The deck also sustained water damage from the pool. MS stated that 1600 – 1700 square feet of flooring and deck had to be replaced and that the water damage went right down to the plywood subfloor. The Landlord had estimates from several organizations and decided to hire the one with the least expensive estimate. The Landlord also replaced 6 sets of curtains in the rental unit because they were missing.

MS stated that the Tenants had changed the locks without the Landlord's knowledge or consent and that the bailiff had to break into the rental unit to evict the Tenants. MS submitted that this meant he had to replace the locks to both doors.

The bailiff called the police because of the Tenant RM's behaviour, and the Landlord was advised by the police not to contact the Tenants. Therefore, there was no condition report completed by both of the parties. The Landlord provided a copy of the Condition Inspection Report that was completed by both parties at the beginning of the tenancy and by the Landlord only at the end of the tenancy.

MS testified that cocaine was found in the rental unit by the police.

MS testified that regular cleaners declined to do the cleaning because of the fecal matter and cocaine that were in the rental unit. He stated that the company hired to make the repairs also did the deep cleaning (2 men, hours each, plus supplies). MS stated that it appeared the house was never cleaned during the tenancy.

The Tenant RM gave the following testimony:

RM acknowledged painting the walls and floor, but stated that he only painted one room and one floor green. He testified that he used a "gel coat/scrape off paint" and that it would peel off the laminate floor and therefore it was not necessary to replace the floors. RM stated that MS knew about the paint and did not object.

RM testified that he has a 4 pound chihuahua, who is fully toilet trained. He denied that there was fecal matter or urine on the carpets.

RM stated that he filmed "one jello wrestling stunt" and that the pool did not flood the rental unit.

RM submitted that he did not pay rent for March, 2017, because he was evicted in March. Therefore he believed he didn't have to pay rent for March.

RM acknowledged changing the locks without the Landlord's permission. He stated that he changed the locks because MS "kept coming over at 10:00 at night for inspections".

RM testified that there were no curtains or drapes on any of the windows at the beginning of the tenancy.

MS gave the following reply:

MS testified that he gave RM written notices to inspect the rental unit, but that RM would not let him in. He stated that RM's testimony was not truthful.

Analysis

On April 11, 2017, the Landlord was provided with a Monetary Order which included unpaid rent for the month of March, 2017. This matter has already been dealt with and therefore this portion of the Landlord's claim is dismissed.

I find that the Landlord did not provide sufficient evidence to support her claim for unpaid utilities in the amount of \$1,495.00. This portion of her claim is also dismissed.

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 37 of the Act provides:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that Landlord's evidence was straightforward, sufficiently detailed and believable. I find that the Tenants' evidence lacked specificity and credibility, particularly with respect to RM's claim that the green paint would simply "peel off" the floor. The

photographs make it very clear that the rental unit was very dirty and damaged at the end of the tenancy. The Condition Inspection Report completed by both parties at the beginning of the tenancy indicates that the rental unit was clean and undamaged at the beginning of the tenancy. In the “Start of Tenancy – Repairs to be completed” section of the Report, are the following words, “No repairs needed anywhere. Everything is in new excellent condition including new furnace, paint, roof, floors”. The Report also discloses that there were window coverings at the beginning of the tenancy, and that they were in good condition, contrary to RM’s testimony.

Although the Tenants’ Application for Review Consideration with respect to the Order of Possession was dismissed, the Tenants did not obey the Order of Possession and move out of the rental unit. This necessitated the services of a Court Bailiff. I find that the Landlord is entitled to recover the costs of the bailiff’s fees and the Court filing fee, in the total amount of \$1,920.00.

The Tenants changed the locks to the rental unit without the Landlord’s permission, contrary to the Act. I accept the Landlord’s evidence in its entirety with respect to her remaining claim for damages.

Based on the Landlord’s documentary evidence and photographs, I accept that the Landlord was not able to re-rent the rental unit for the month of April, 2017, because of the Tenants’ breach of Section 37(2) of the Act. I allow that portion of her claim for loss of revenue in the amount of \$1,800.00 for April, 2017.

The Landlord has been largely successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Tenants.

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards her monetary award.

The Landlord is hereby provided with a Monetary Order, calculated as follows:

Unpaid rent for April, 2017	\$1,800.00
Bailiff fees	\$1,800.00
Supreme Court filing fees	\$120.00
Painting (materials and labour)	\$3,202.50
Materials to replace damaged floors	\$1,770.60
Labour for replacing damaged floors; cost of removing locks and installing new locks (front and back); garbage	

removal (2 loads); deep cleaning bathroom, kitchen, deck; removing and replacing damaged screen door; removal and disposal of bedroom carpet and living room laminate floor; removal, disposal and replacement of broken fence	\$5,336.88
Recovery of filing fee	<u>\$100.00</u>
Subtotal	\$14,129.98
Less set-off of security deposit	<u>-\$900.00</u>
TOTAL	\$13,229.98

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$13,229.98** for service upon the Tenants. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: July 25, 2017

Residential Tenancy Branch