



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNSD FF
 Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application was received at the Residential Tenancy Branch on February 23, 2017 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order that the Landlords be permitted to keep all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application was received at the Residential Tenancy Branch on March 10, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order that the Landlords return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by E.M. The Tenants were both in attendance at the hearing and called one witness, A.S. All parties giving evidence provided a solemn affirmation.

On behalf of the Landlords, E.M. testified the Landlords' Application package was served on the Tenants by registered mail at the end of February 2017. Although E.M. could not recall a precise date, the Tenants acknowledged receipt of the Landlords' Application package at the end of February 2017. I find the Landlords' Application package was served upon and received by the Tenants in accordance with the *Act*.

The Tenants testified the Tenants' Application package was served on the Landlords by registered mail on March 11, 2017. E.M. acknowledged receipt on March 12, 2017. I find the Landlords were served with the Tenants' Application package on March 12, 2017.

No issues were raised with regard to service or receipt of the above documents. The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order that the Landlord be permitted to keep all or part of the security deposit or pet damage deposit?
3. Are the Landlords entitled to an order granting recovery of the filing fee?
4. Are the Tenants entitled to the return of all or part of the security deposit or pet damage deposit?
5. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on January 15, 2016. During the tenancy, rent in the amount of \$1,200.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$200.00, which the Landlord holds. The parties confirmed these terms.

The Landlords' Claim

On behalf of the Landlords, E.M. testified the Tenants vacated the rental unit on January 31, 2017, without providing notice to end the tenancy in accordance with the *Act*. The Landlords did not receive rent for the month of February 2017, and were unable to rent the unit to new tenants until March 1, 2017.

The Tenants acknowledged that notice was not given in accordance with the *Act*. However, they testified the tenancy ended by agreement. According to the Tenants, the parties had a meeting on January 20, 2017. During the meeting, the parties discussed entering into a new tenancy agreement because of a change in the number of occupants in the rental unit. However, the Tenants did not agree to the proposed changes and the meeting became heated. The Tenants subsequently advised the Landlords via text message that they intended to vacate the rental unit on January 31, 2017, which they did. A copy of the text message, dated January 23, 2017, was submitted with the Tenants' documentary evidence.

The Tenants also referred to a copy of the original tenancy agreement, produced by the Landlord at the July 20, 2017, meeting. The copy referred to by the Tenants was not produced by either party for use during the hearing. In any event, the Tenants testified that the copy had the word "void" written on the front page. They submitted this voided the tenancy agreement and ended the tenancy by agreement. In reply, the Landlord testified that a copy of the original tenancy agreement had only been marked void in anticipation of the parties signing a new tenancy agreement.

The Tenants' Claim

The Tenants sought to recover the security deposit and pet damage deposit paid to the Landlords. They testified that the Landlords were provided with their forwarding address in writing, along with keys to the rental unit, on February 10, 2017. E.M. acknowledged receipt of the forwarding address on February 11, 2017, and the Landlords applied for dispute resolution on February 23, 2017.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Landlords' Claim

Section 26 of the *Act* confirms that tenants must pay rent when due under a tenancy agreement. In this case, the tenancy agreement and the parties confirmed that rent in the amount of \$1,200.00 was due on the first day of each month. The Tenants did not dispute that they did not pay rent for the month of February 2017.

In addition, section 45 of the *Act* permits a tenant to end a periodic tenancy by giving the landlord notice in accordance with that provision. The parties agreed the Tenants vacated the rental unit on or about January 31, 2017, without giving written notice in accordance with section 45 of the *Act*. However, the Tenants submitted that failed discussions regarding a new tenancy agreement ended the tenancy by agreement. I disagree. Rather, I find that the tenancy continued until ended in accordance with the *Act*. If the Tenants wished, they had the option to continue the tenancy on the agreed terms and file an application for dispute resolution to determine whether or not the changes proposed by the Landlord were permitted under the *Act*, regulations or the tenancy agreement. They did not.

In light of the above, I find the Landlords are entitled to recover rent for the month of February 2017 in the amount of \$1,200.00. Having been successful, I also find the Landlords are entitled to recover the filing fee. The Landlords further applied to retain and apply the security deposit and pet damage deposit in partial satisfaction of their claim, which I allow. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$500.00, which has been calculated as follows:

Claim	Amount
Unpaid rent (February 2017):	\$1,200.00
Filing fee:	\$100.00
LESS security and pet damage deposits:	(\$800.00)
TOTAL:	\$500.00

The Tenants' Claim

In light of my findings above, it has not been necessary for me to consider the Tenants' claim to recover the security deposit and pet damage deposit further. The Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Landlords are granted a monetary order in the amount of \$500.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' Application is dismissed, without leave to reapply.

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