



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' Application made October 20, 2017: OPR; MNR; FF

Tenants' Application made September 15, 2017: CNR; OLC; LRE; OPT; FF; MNDC; O
amended November 2, 2017, to increase the amount of their
monetary claim

Introduction

This Hearing was scheduled to consider cross Applications for Dispute Resolution. The Landlords seek an Order of Possession and Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants.

The Tenants seek an Order of Possession; to cancel a Notice to End Tenancy for Unpaid Rent; an Order that the Landlords comply with the Act, regulation or tenancy agreement; an Order suspending or restricting the Landlords' right to access the rental unit; compensation under the Act, regulation or tenancy agreement; to recover the cost of the filing fee from the Landlords; and other unspecified order(s).

Both parties attended the Hearing and gave affirmed testimony. At the outset of the Hearing, the Tenant JG stated that the Tenants moved out of the rental unit on November 15, 2017, and therefore the only remaining issue is the Tenants' monetary claim and recovery of the filing fee. The Landlord LS testified that the Tenants did not move out until November 21, 2017; however, she agreed that the Tenants have moved and that the Landlords have taken back possession of the rental unit. Therefore, the only remaining issue for the Landlords is their monetary claim and recovery of the filing fee.

The Landlord asked to include a claim for loss of revenue for the period between November 1 and November 20, 2017. Pursuant to the provisions of Section 64(3)(c)

and Rule 4.2 of the Rules of Procedure, I amended the Landlords' Application to include a request for loss of revenue incurred since the time the Application was made.

It was determined that the parties duly served each other with their Notice of Hearing documents and copies of their documentary evidence.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary award for unpaid rent and loss of revenue?
- Are the Tenants entitled to compensation for work done at the rental property?

Background and Evidence

This tenancy began on September 1, 2016. Monthly rent was \$1,250.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00. On June 29, 2017, the Landlords gave the Tenants notice that their rent would increase to \$1,296.25 effective October 1, 2017. A copy of that notice of rent increase was provided in evidence.

The Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 12, 2017. The Tenant JG acknowledged receipt of the Notice on September 12, 2017.

JG testified that she attempted to pay the outstanding rent on September 13, 2017, but was unable to do so because the Landlord LS blocked the bank account where rent payments were made. LS unblocked the account on September 25, 2017.

The Landlords are claiming the following amounts:

Rent for September, 2017	\$1,250.00
Loss of revenue for October, 2017	\$1,296.25
Loss of revenue from November 1 to 20, 2017	<u>\$907.37</u>
TOTAL	\$3,453.62

JG testified that the rental property was for sale and that, although she did not tell the Landlord the Tenants were moving out, she gave the Landlord's realtor the "clicker" for the garage to show prospective buyers the rental unit. She stated that she did this on November 15, 2017, and therefore she submitted that November 15 was the date that the Landlord had possession of the rental property.

LS submitted that the Tenants did not provide the Landlords with the key to the rental unit until November 20, 2017, and therefore the Landlords did not have possession of the property until that date.

JG testified that the Tenants had given their previous landlord notice that they were moving on September 1, 2016, but that the rental property was not ready for them to occupy on September 1, 2016. She stated that the Tenants had nowhere else to go, so they agreed to “do some work” at the rental property.

The Tenants are seeking compensation from the Landlords, as follows:

Cost of mailing documents by registered mail	\$14.95
One month free rent because the Landlord was selling the rental property	\$1,250.00
Cost for hauling garbage, lawnmower, fuel, monies paid to others to help the Tenants, cost to install dishwasher, gardening, painting, etc.	<u>\$2,500.00</u>
TOTAL	\$3,764.95

JG stated that the Tenants paid cash to some people the Tenants hired to do some of the work. The Tenants provided hand written notes from four individuals who state that they helped the Tenants to get the property ready for move-in. She stated that the Tenants also paid a small amount (“\$5 or \$10.00 per month or \$60.00 to \$120.00 over the term of the tenancy”) to their neighbour for the hydro cost of a pump for a shared “septic lagoon”. The Tenants did not include this amount on their monetary worksheet.

LS testified that the fair market rent for the property was \$1,500.00 per month, but that the Landlords reduced the rent to \$1,250.00 because there was work to be done. LS submitted that the Tenants have therefore “already received \$3,000.00 of rent”. LS stated that the Tenants did not seek additional compensation until after they were served with the Notice to End Tenancy for Unpaid Rent.

Analysis

Regarding the Landlords’ claim

It is important to note that I find that the Notice to End Tenancy for Unpaid Rent was not a valid notice to end the tenancy. The Tenants had 5 days to pay the outstanding rent, but the Landlords stopped the Tenants from paying the rent within 5 days of receipt of

the Notice by blocking their bank account. Nevertheless, the Tenants moved out of the rental unit.

JG did not dispute that the Tenants did not pay rent for September, October or November, 2017. I find that the Landlords have established their claim for unpaid rent for September and October, 2017. With respect to rent for November, 2017, I find that the Landlords took back possession of the rental property on November 20, 2017, when they received the keys from the Tenants. The Landlords seek compensation for rent for 20 days in November and I find that they are entitled to that compensation in the amount of \$43.2083 per day ($\$1296.25 / 30 \text{ days} = \43.2083), totalling \$864.17.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security deposit towards partial satisfaction of their monetary award.

The Landlord's Application had merit and I find that the Landlords are entitled to recover the cost of the filing fee from the Tenants.

The Landlords have established a total monetary award, calculated as follows:

Unpaid rent for September, 2017	\$1,250.00
Unpaid rent for October, 2017	\$1,296.25
Unpaid rent for November, 2017	\$864.17
Recovery of filing fee	\$100.00
Less set off of security deposit	<u><\$500.00></u>
TOTAL	\$3,010.42

Regarding the Tenants' claim

The Tenants claim for the cost of serving the Landlords by registered mail. There is no provision in the Act for recovery of the cost of serving another party and this portion of their claim is dismissed.

The Tenants also claim the equivalent of one month's rent "because the Landlords were selling the property.

Section 51 of the Act provides:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on

or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 of the Act provides for such compensation, but only if the Tenants are served with a Two Month Notice to End the Tenancy for Landlord's Use of Property. In this case, the Tenants did not receive a Two Month Notice. Therefore, this portion of their claim is also dismissed.

I find that the Landlords did not provide sufficient evidence to support their claim that the rent was decreased because of the state of repair and cleanliness of the rental unit.

Based on the testimony of both parties, I find that the first day of the tenancy was September 1, 2016.

Section 32 of the Act provides:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Landlords did not dispute that the rental unit was not ready for the Tenants to occupy on September 1, 2016, pursuant to the tenancy agreement. I find that the Landlords did not comply with Section 32 of the Act and that the Tenants are entitled to compensation under Section 67 of the Act for the Landlord's breach of the Act.

Based on the Tenants' documentary evidence, including statements from their neighbor, and from people hired to help the Tenants make the rental property suitable for occupation, pursuant to the provisions of Section 67 of the Act, I find that the amount claimed of \$2,500.00 is reasonable. I allow this portion of the Tenants' claim.

The Tenants' Application had merit and I find that the Tenants are entitled to recover the cost of the \$100.00 filing fee from the Landlords. The Tenants' total monetary award is therefore \$2,600.00.

Set off of claims

I hereby set off the Tenants' monetary award against the Landlords' monetary award and provide the Landlords with a Monetary Order for the balance, in the amount of \$410.42.

Conclusion

The Landlords are hereby provided with a Monetary Order in the amount of **\$410.21** for service upon the Tenants. This Order may be enforced in the Provincial Court of British Columbia (Small Claims Division).

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: December 26, 2017

Residential Tenancy Branch