



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MND, MNDC, MNR, LRE, OLC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

Both parties attended the hearing via conference call and confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence of the other party. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served and are deemed served as per section 90 of the Act.

At the outset, both parties confirmed in their direct testimony that the tenants had vacated the rental premises on December 1, 2017 and that possession was no longer an issue. The tenants confirmed that the remaining portions of their claim (CNR, LRE and OLC) were to be cancelled and no longer required action. The landlord also confirmed that no further action was required for that portion of her claim (OPR). As such, the hearing proceeded on the landlord's monetary claim only (MND, MNR, MNDC, FF).

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage, for money owed or compensation for damage and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed this tenancy began on September 1, 2017 on a month-to-month basis as per a signed tenancy agreement dated September 7, 2017. The monthly rent was \$1,700.00 payable on the 1st day of each month. A security deposit of \$280.00 and a pet damage deposit of \$280.00 were paid on September 10, 2017. Both parties confirmed that no condition inspection report(s) for the move-in or the move-out were completed.

The landlord provided a revised monetary claim in her direct testimony seeking \$5,550.00 which consists of:

| | |
|------------|-------------------------------------|
| \$850.00 | Unpaid Rent, November 2017 |
| \$1,700.00 | Unpaid Rent, December 2017 |
| \$1,700.00 | Loss of Rental Income, January 2018 |
| \$500.00 | Damage, Kitchen Flooring |
| \$300.00 | Garbage Removal |
| \$500.00 | Damage, Bathroom Flooring |

The landlord claims that the tenants failed to pay all of the rent for November 2017 and vacated the rental premises without any notice. The tenants disputed this claim stating that they were complying with a 1 month notice effective on December 1, 2017 and that

an agreement was made that if they vacated by December 1, 2017 the remaining portion of the November 2017 rent would be forgiven. The landlord disputes these claims stating that an offer was made, but no agreement was completed between the two parties. The landlord also disputed that a 1 month notice was not served to the tenants. The tenant referred to a text message sent from the landlord regarding the offer. The tenant was unable to provide sufficient evidence of communication with the landlord accepting the offer. The landlords stated that the tenant left the rental premises "un-rentable" due to the damage caused to the kitchen and bathroom flooring which required the complete removal and replacement. The tenants dispute this claim stating that the flooring damage claimed by the landlord was present at the beginning of the tenancy and was not caused by the tenants.

The landlord claims that damage caused by the tenants to the kitchen flooring incurred a \$500.00 cost to repair. The tenants disputed this claim stating that the condition of the flooring was the same at the beginning of their tenancy. The landlord clarified that no work had yet been done as of the date of this hearing, but that the flooring materials were just purchased. The landlord stated that no invoices or receipts were provided.

The landlord also claims \$300.00 for garbage removal of various items left in the carport and yard by the tenants. The tenants dispute this claim stating that the various building materials left were from the landlord during renovation work. The landlord was not able to provide any supporting evidence that the materials were left by the tenants.

The landlord seeks a claim of \$500.00 for the cost of replacing the basement bathroom flooring. The landlord states that the tenants vacated the premises leaving it damaged due to "flaking".

The landlord has submitted in support of these claims:

- 7 photographs of the exterior carport showing various items.
- 1 photograph of the transition between flooring (basement flooring). No damage apparent
- 1 photograph of damaged drywall
- 1 photograph of feces in yard

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlord's claim for unpaid rent of \$850.00 for November 2017, I find that the landlord has established a claim. Although the tenants have claimed that an agreement was made to "forgive" the \$850.00 portion of November 2017 rent, the tenants' reliance on text messages do not corroborate this claim. A review of the material provided by the tenants' show one text message(s) from the landlord which states,

The issue we have is that T. did not pay his rent and you are both responsible for that \$850.

The only other text message with reference to monthly rent was,

Hey A., don't worry about N.'s half this month. Let's start a clean slate next month. T. said his friend is moving in on the 1st.

I find that this falls short of an offer and acceptance to "forgive" the \$850.00 rent owed for November 2017 as claimed by the tenants. I also note that the written response provided by the tenants stated in part,

...In text messages on November 30th Ms Elaird indicates that the only outstanding amount is \$850 owed by Travis, the \$850 he was not able to pay due to her reneging on her promises of fulltime employment and his broken hand...

I find that this reference to an offer of services in lieu of rent which was never completed for November 2017 rent.

On the landlord's claim for unpaid rent/loss of rental income for December 2017 of \$1,700.00, I find that the landlord has failed. The tenants have claimed that the end of tenancy on December 1, 2017 was the result of complying with a 1 month notice (not submitted by either party). In any event neither party has provided sufficient evidence of a 1 Month Notice. The landlord bears the burden of proof to show that she was

unable to re-rent the premises. In this case, the landlord has claimed that the premises were un-rentable due to damage. I find that the landlord has failed to provide sufficient evidence of damage that would prevent her from re-renting the unit. As such, I find that the landlord's claim for unpaid rent/loss of revenue for December 2017 of \$1,700 is dismissed.

On the landlord's claim for loss of rental income for January 2018 of \$1,700.00 due to the rental premises being "un-rentable", I find that the landlord has failed. The landlord has claimed that the flooring in the kitchen and bathroom were damaged making it "un-rentable" which required the flooring to be replaced. A review of the landlord's photographic evidence in contrast with the tenants' photographic evidence is insufficient to determine that the tenants damaged the flooring. As there are no condition inspection reports for the move-in or the move-out to give a clear indication of the condition of the rental premises before and after the tenancy began, I find that the landlord has failed to establish the claim of loss of rental income do to damages for being "un-rentable". I find that this also impacts the landlord's claims for damages for flooring in the kitchen (\$500.00) and bathroom (\$500.00) and as such are also dismissed.

The landlord's claim for \$300.00 in costs for garbage removal has failed. The landlord has claimed that the tenant vacated the premises leaving various building materials through the property. The landlord confirmed that as of the date of this hearing none of the items have been removed nor has she incurred any cost/expenses relating to them. The tenant has disputed that these were various building materials left by the landlord during the tenancy after each renovation/repair job. I find that the landlord has failed to provide sufficient evidence to support the claim that the items were left by the tenants and this portion of the landlord's claim is dismissed.

The landlord's claim for \$500.00 in replacement cost for the basement bathroom flooring has failed. The tenant has disputed the landlord's claim that damage was caused by them. The landlord relies solely on a photograph of the flooring transition between vinyl and wood flooring. No apparent damage is evident in this one photograph. As well, the landlord has failed to provide any receipt/invoice for this claim. As such, I find that the landlord has failed to provide sufficient evidence that the bathroom flooring was damaged by the tenants and that she incurred an expense equal to \$500.00. This portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$850.00.

The landlord having been partially successful is entitled to recovery of the filing fee of \$100.00.

Conclusion

The landlord is granted a monetary order for \$950.00.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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: February 1, 2018

Residential Tenancy Branch