



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C-VAN INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNR MNDC FF
Tenants: CNR RR OLC MNDC RP

Introduction

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

The Landlords’ Application for Dispute Resolution was made on January 25, 2018 (the “Landlord’s Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on January 8, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord make repairs to the unit, site, or property;
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by L.G., an agent, who was accompanied by B.G., a witness. The Tenant T.P. attended the hearing on behalf of both Tenants. She was accompanied by L.E., who did not participate in the hearing. All parties giving testimony provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, L.G. testified the Landlord’s Application package was served on the Tenants by registered mail and in person on January 27, 2018. T.P. acknowledged receipt of the Landlords’ Application package. On behalf of the Tenants, T.P. testified the Tenants’

Application package was served on the Landlord by registered mail on January 17, 2018. In addition, a subsequent documentary evidence package was served on the Landlords in person on February 28, 2018. L.G. acknowledged receipt of these documents on behalf of the Landlords. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties in attendance were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties agreed the Landlords were incorrectly named in the Applications, and that it would be appropriate to amend the Applications to reflect the names of the Landlords as they appear in the tenancy agreement submitted into evidence. Accordingly, pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Applications to reflect the names of the Landlords as they appear in the tenancy agreement.

In addition, the parties confirmed the Tenants never occupied the rental unit. Accordingly, it is not necessary for me to consider the Tenants' Application as it relates to an order cancelling a notice to end tenancy for unpaid rent or utilities (CNR), to an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement (OLC), to an order that rent be reduced for repairs, services or facilities agreed upon but not provided (RR), and to an order that the Landlords make repairs to the unit, site, or property (RP). These aspects of the Tenants' Application have not been considered further in this Decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to recover the filing fee?
4. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
5. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement, signed on December 8, 2017. A copy of the tenancy agreement was submitted into evidence. It confirmed the fixed-term tenancy was to begin on January 1, 2018, and end on December 31, 2018. Rent in the amount of \$1,700.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$850.00 and a pet damage deposit of \$850.00, which the Landlords hold.

The Landlords' Claim

On behalf of the Landlords, L.G. testified that the Tenants applied to rent the unit in mid-November 2017. He advised that the Tenants agreed to do certain work to help get the unit ready. L.G. stated that, throughout November and December 2017, the Tenants appeared to be happy with the arrangement. However, on or about December 30, 2017, the Tenants advised of their dissatisfaction with the rental unit for the first time. Although the tenancy was to begin on January 1, 2018, the Tenants did not move into the rental unit as per the tenancy agreement. The Tenants advised they were dissatisfied with the condition of the rental unit. L.G. testified that despite his efforts to contact the Tenants to rectify the situation, he finally accepted the Tenants were not going to move into the rental unit on or about January 20, 2018.

L.G. testified that he took steps to re-rent the unit through three popular online websites, and that the unit was successfully re-rented effective April 1, 2018. However, he confirmed the Landlords did not receive written notice of the Tenants' intention to end the tenancy. L.G. confirmed testified that rent was not paid when due on January 1, February 1, and March 1, 2018, and that \$5,100.00 remains outstanding.

On behalf of the Tenants, T.P. acknowledged that rent was not paid as claimed. However, she testified that the condition of the rental unit made it unsuitable to live in. Specifically, she testified that the bathtub was not fully sealed, the kitchen cabinets and countertops were not properly installed, and there was no carpeting in the downstairs bathroom.

The Tenants' Claim

A monetary order worksheet was not submitted with the Tenants' Application. However, during the hearing, T.P. confirmed the claims that formed the Tenants' Application for monetary relief. First, the Tenants claimed \$1,700.00 in recovery of the security deposit and pet damage deposit. As noted above, the Tenants did not occupy the rental unit because, according to T.P., it was not suitable to move into. A number of photographic images were submitted into evidence, which depicted construction debris left in and around the rental unit.

Second, the Tenants claimed \$100.00 on behalf of their children, who assisted with cleaning in preparation for moving in. T.P. stated that L.G. offered to pay the Tenants for cleaning, but that the Tenants suggested it would be nice if he gave the Tenants' children something for their efforts instead.

Third, the Tenants claimed \$1,700.00 for the "stress and crap" they have experienced. In addition to her testimony concerning the condition of the rental unit, T.P. testified that the parties agreed that rent would be \$1,500.00 per month to reflect the work that was being done by the Tenants to help get the rental unit ready. The Tenants submitted into evidence an email to L.G. dated November 17, 2017. In it, T.P. asked L.G. about the mechanics of the arrangement whereby rent would be reduced for work completed by the Tenants. In his reply, L.G. confirmed

that any work would have to be approved by L.G. and the Landlord, and that there would have to be agreement on an amount to be deducted from rent.

The Tenants also sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that each party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

The Landlords claimed \$5,100.00 for unpaid rent. Section 16 of the *Act* confirms when the rights and obligations of landlords and tenants take effect. It states:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[Reproduced as written.]

Further, section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find that the rights and obligations of the parties, including the Tenants' obligation to pay rent when due, took effect on December 8, 2017, when the tenancy agreement was entered into. However, it was undisputed that rent was not paid on January 1, February 1, and March 1, 2018. I also find that the Landlords' agent, L.G., was aware the Tenants did not intend to occupy the rental unit as early as January 20, 2018, and took steps to re-rent it. However, I find it is more likely that not that some of the delay in re-renting the unit may be attributed to completing the renovations. Accordingly, I find it is reasonable in the circumstances to grant the Landlord a monetary award equal to two month's rent, or \$3,400.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the application. I also order that the Landlords may retain the security deposit and pet damage deposit in partial satisfaction of their claim.

Pursuant to section 67 of the *Act*, I find the Landlords have demonstrated an entitlement to a monetary order in the amount of \$1,800.00, which has been calculated as follows:

| Item claimed | Allowed |
|---------------------|-------------------|
| Unpaid rent: | \$3,400.00 |
| Filing fee: | \$100.000 |
| LESS deposits: | (\$1,700.00) |
| TOTAL: | \$1,800.00 |

The Tenants' Claim

The Tenants claims are summarized under *Background and Evidence*, above. With respect to the Tenants' claim for the return of the security deposit and pet damage deposit, section 38 of the *Act* requires a landlord, on receipt of a tenant's forwarding address in writing, to either repay the deposits to the tenant or make a claim against them by filing an application for dispute resolution. The event that triggers the landlord's obligation to return the security deposit to the tenant is receipt of the forwarding address in writing. In this case, I find there was insufficient evidence before me to conclude that the Tenants provided their forwarding address in writing to the Landlord.

Further, I find there was insufficient evidence before me to conclude that the Landlords or their agent agreed to pay the Tenants' children \$100.00, or any amount, to clean the rental unit.

Finally, I find there was insufficient evidence before me to conclude the Tenants are entitled to compensation for "stress and crap", although I appreciate the process was frustrating for the parties.

To address the Tenants' claim that the rental unit was not suitable for occupation and that photographic evidence submitted by the Tenants confirm the rental unit required disposal of construction debris and general cleaning, I find there is insufficient evidence to conclude that the rental unit was not suitable for occupation.

Further, to address the Tenants' claim that rent would be reduced to \$1,500.00; I find there is insufficient evidence of such an agreement. Although the email correspondence submitted by the Tenants suggests there were discussions about rent reductions on a case-by-case basis, I find there was insufficient evidence before me to conclude that rent would be reduced to \$1,500.00 per month on an ongoing basis. Rather, the tenancy agreement, signed by the parties on December 8, 2017, confirmed rent was to be \$1,700.00 per month.

I find that the Tenants' Application is dismissed, without leave to reapply.

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$1,800.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 13, 2018

Residential Tenancy Branch