



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR OPC FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on October 26, 2018 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

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

The Landlord J.F. attended the hearing on behalf of both Landlords. The Tenants attended the hearing and were represented by L.V., legal counsel. J.F. and the Tenants provided affirmed testimony.

On behalf of the Landlords, J.F. testified the Application package and documentary evidence was served on the Tenants by registered mail. L.V. acknowledged receipt on behalf of the Tenants. Pursuant to section 71 of the *Act*, I find that these documents were sufficiently served for the purposes of the *Act*. The Tenants did not submit documentary evidence in response to the Application.

The parties 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

During the hearing, the parties agreed the tenancy ended on October 31, 2018, at which time the Tenants vacated the rental unit. In addition, J.F. acknowledged utilities in the amount of \$161.78 were paid. Accordingly, it was not necessary to address the Landlords' request for an order of possession and a monetary award of \$161.78 for unpaid utilities. These aspects of the Landlords' claim have not been considered further.

In addition, the Landlords claimed \$24.26 for registered mail charges associated with service of documents on the Tenants. During the hearing, J.F. was advised that costs associated with preparing for a hearing are generally not recoverable, and that this aspect of the Application would also not be considered further.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent?
2. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on January 1, 2018, and was expected to continue to December 31, 2019. Rent in the amount of \$3,000.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,500.00, which the Landlords hold.

The Landlord claimed \$6,000.00 in unpaid rent for the months of November and December 2018. The Landlords' documentary evidence was discussed with the parties during the hearing. The parties did not dispute that on October 11, 2018, the Tenants sent an email to the Landlords to confirm they would vacate the rental property on October 31, 2018. A Mutual Agreement to End a Tenancy, signed by the Tenants, was attached to the email. During the hearing, J.F. confirmed the Landlords refused to sign it.

Further, J.F. testified the Tenants did not leave on October 31, 2018, as claimed. Rather, J.F. testified that although the rental property was mostly cleared out, the fridge remained stocked. She stated the Tenants were asked to come back to remove these items in the first few days of November 2018.

In addition, J.F. testified the Landlords took steps to re-rent the property by placing advertisements on Castanet and Craigslist. Copies of the advertisements were submitted into evidence. During the hearing, J.F. confirmed the Castanet advertisement was paid for on November 1, 2018. However, J.F. did not confirm when the Craigslist advertisement was posted during the hearing. In any event, J.F. testified the Landlords were unable to rent the property so they decided to re-list the property for sale in November 2018. The property had previously been listed for sale in September 2018.

The Tenants testified that the rental property was cleaned and vacated on October 31, 2018. On behalf of the Tenants, L.V. submitted that the Tenants provided the Landlords with notice of their intention to vacate the rental property on October 31, 2018. This notice was provided via email on October 11, 2018. Attached to the email was a Mutual Agreement to End a Tenancy, signed by the Tenants.

Analysis

Based on the unchallenged oral testimony and documentary evidence, and on a balance of probabilities, I find:

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

I find there is insufficient evidence before me to conclude the Landlords took reasonable steps to minimize the damage or loss. The Landlords knew on October 11, 2018, that the Tenants intended to vacate the rental unit on October 31, 2018. However, there is insufficient evidence before me to conclude the Landlords took any steps to re-rent the property until November 1, 2018. I also note the Tenants went so far as to provide the Landlords with a signed Mutual Agreement to End a Tenancy, which the Landlords refused to sign, even though it would effectively end the tenancy as they wished.

I also find it significant that J.F. acknowledged that the rental property was listed for sale in September 2018 and again in November 2018. Although there appears to have been a brief period where the property was listed for rent, I find it is more likely than not that the Landlords always intended to sell the rental property and took limited steps to re-rent the property.

As I have found that the Landlords did not do what was reasonable to minimize their losses, I find that the Landlords' Application is dismissed, without leave to reapply.

Policy Guideline #17 confirms that an arbitrator must order the return of a security deposit to the tenants when an application to retain all or part of the security deposit is not successful, whether or not the tenant has applied for dispute resolution for its return. In this case, L.V. testified that the Tenants have submitted an application for dispute resolution seeking the return of double the amount of the security deposit, pursuant to section 38 of the Act. However, the Tenants' application was not made in time to be crossed with the Landlords' Application. As the Tenants' application is not before me, it has not been considered. However, in accordance with Policy Guideline #17, I find the Tenants are entitled to a monetary order in the amount of \$1,500.00, which is the amount of the security deposit retained by the Landlords.

Conclusion

In accordance with Policy Guideline #17, the Tenants are granted a monetary order in the amount of \$1,500.00. The 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: December 4, 2018

Residential Tenancy Branch