



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 15, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent or utilities;
- an order that the Landlords be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing and provided affirmed testimony.

The Landlords testified that the Notice of Dispute Resolution Hearing documents were served on B.W. in person at her place of employment on September 28, 2019. B.W. testified they were received at the beginning of October. Although the Landlords were unable to serve E.R., he advised during the hearing he was prepared to accept service of the Notice of Dispute Resolution Hearing documents through B.W. I find the Tenants were served with and received these documents on September 28, 2019.

During the hearing, the Tenants testified they have not received any of the documentary evidence relied upon by the Landlords. In reply, the Landlords confirmed that photographic evidence uploaded to the Service Portal on or about September 15, 2019 was not served on the Tenants. G.M. testified to her belief the Residential Tenancy Branch would forward that information to the Tenants.

In addition, the Tenants denied receipt of a documentary evidence package that was uploaded to the Service Portal by the Landlords on January 3, 2019. The Landlords testified that it was initially sent to the Tenants via text message and was subsequently delivered to B.W.'s place of work. B.W. testified the text messages were unreadable and that the package was not received at her place of work.

In light of the above, I find there is insufficient evidence before me to conclude that the Tenants received any of the documentary evidence uploaded to the Service Portal by the Landlords. Therefore, it has not been considered further in this Decision.

The Tenants did not submit documentary evidence in response to the Application.

The parties were in attendance and were prepared to proceed. 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.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to retain the security deposit held in partial satisfaction of the claim?
4. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 16, 2017 and that the Tenants vacated the rental unit on August 5, 2019. The parties also agreed that rent in the amount of \$1,665.00 per month was initially due on the first day of each month, but that the Landlords established a pattern of allowing the Tenants to pay on the fifth day of the month. The Tenants paid a security deposit in the amount of \$800.00, which the Landlords hold.

The Landlords claimed \$1,000.00 for cleaning and repairs required in the rental unit after the Tenants vacated. The Landlords testified this was an estimate of the cost. G.M. referred to garbage left behind and the smell of smoke in the rental unit. She also testified the Landlords had to have the vents cleaned and indicated there was damage to a toilet.

In reply, B.W. referred to a number of shortcomings with the rental unit when the Tenants moved in and issues that arose during the tenancy.

The Landlords also claimed \$1,665.00 for unpaid rent for the month of August 2019. The Landlords testified that the first they knew of the Tenants' intention to vacate the rental unit was on August 6, 2019, after G.M. sent B.W. a text message requesting payment.

The Tenants acknowledged rent was not paid as claimed. However, B.W. referred to a conversation with C.M. during which he said the Tenants could leave if they were unhappy. The Tenants testified they took this to mean they could leave at any time without notice. However, the Landlords testified the intent was that the Tenants would leave with proper notice if they chose to end the tenancy.

Finally, the Landlords claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlords to retain the security deposit held in partial satisfaction of the claim.

Analysis

Based on the affirmed 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 Tenant. 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.

With respect to the Landlords' claim for \$1,000.00 for cleaning and repairs required in the rental unit, I find there is insufficient evidence before me to establish the Landlords' alleged losses. As noted above, none of the documentary evidence uploaded to the Service portal by the Landlords has been considered due to issues with service. This aspect of the Application is dismissed.

With respect to the Landlord's claim for \$1,665.00 for unpaid rent for the month of August 2019, section 26 of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. In addition, section 45 of the *Act* confirms a tenant may end a month-to-month tenancy by giving the landlord one month's notice. Notice given in any month is effective to end the tenancy on the last day of the following month.

In this case, I find the Tenants vacated the rental unit on August 5, 2019, without providing notice to the Landlords in accordance with section 45 of the *Act*. I do not accept the Tenants' submission that the Landlords had given permission to leave at any time without proper notice. As the parties agreed during the hearing, the Landlords were

not given notice until August 6, 2019, via text message. As a result, rent became due. However, the Tenants acknowledged rent has not been paid. Therefore, based on the testimony of the parties, I find the Landlords have established an entitlement to recover rent due for the month of August 2019 in the amount of \$1,665.00.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$965.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent (August 1-31, 2019):	\$1,665.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$800.00)
TOTAL:	\$965.00

Conclusion

The Landlords are granted a monetary order in the amount of \$965.00. 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: January 17, 2020

Residential Tenancy Branch