



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKY INTERNATIONAL INVESTMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) and tenant EB attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence; however, the landlord said he had not reviewed the tenants' evidence, which was contained on a USB drive, due to security concerns. The landlord was offered the opportunity for an adjournment of the hearing, so that he could review the photographs and other documentary and digital evidence. The landlord refused the adjournment offer and the hearing proceeded. I informed the landlord that I would be reviewing and considering the tenant's evidence, as I find it was properly submitted. Further, I find the tenant made attempts prior to the hearing to ensure whether the landlord could open the USB drive, without a response.

Thereafter both parties were provided the opportunity to present their affirmed oral evidence and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties'

respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to unpaid monthly rent from the tenants, to retain the tenants' security deposit in partial satisfaction of a possible monetary award, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a copy of an application for tenancy signed by both tenants, which showed an offer of a lease beginning on September 1, 2020, for a monthly rent of \$1,600 and a security deposit of \$800.

The landlord submitted a copy of a written tenancy agreement, which was unsigned by the tenants.

The undisputed evidence is that the tenants paid the landlord a security deposit of \$800, which the landlord has retained, having made this claim against it.

The landlord gave the following testimony. The landlord is entitled to \$1,600, as the tenancy was to start on September 1, 2020, but that the tenants refused to sign the tenancy agreement when they were moving in on that date. They failed to pay the first month's rent of \$1,600.

I asked the landlord some questions, which rose from my review of the tenants' photographic and documentary evidence.

The landlord said that the condition of the rental unit was "quite good". The building is 50 years old. There are only two sources from which there can be leaks, the roof and a pipe. The roof is new, 10 years old, and there are no leaks there. Further, there are no leaks from any pipe. Although the landlord said he had not seen the tenants' photographs, he said that the photographs show the rental unit was in "normal" condition, even though the previous tenants failed to clean the rental unit.

He said previous tenants had disconnected the smoke alarm. It is normal for there to be marks on walls, but there was no mould.

The landlord said he informed the tenants if they were unhappy with the state of the rental unit, they could apply to the Residential Tenancy Branch (RTB) for a reduction in monthly rent.

The landlord's additional piece of evidence was an unsigned, incomplete monetary order worksheet.

Tenant's response –

The tenant gave the following testimony. All the photographs they submitted were taken on September 1, 2020, the date they were to move in. They could not move into the rental unit due to it being excessively dirty and unrepaired. There was mould all over the rental unit. Later on, the tenant consulted a mould expert. The response indicates there was mould in the rental unit and most likely the wet drywall would have to be replaced.

The area below the kitchen sink was excessively dirty and appeared to have leaks. There were leaks in the ceilings and the smoke alarm was hanging from the ceiling with cut wires.

The tenants could not properly see the condition of the rental unit when they first visited on July 29, as the other tenants still had their personal property there and there were coloured lights on.

There were drawings on the wall.

They hired movers, who came to the rental unit that day with their personal property; however, they realized they could not move into the rental unit due to health and safety concerns for themselves and their pets.

The tenant's relevant evidence included a substantial number of photographs, a mould professional's opinion about the walls in the rental unit, a statement from the movers, and a statement from the tenant's parents, who had come to the rental unit on September 1, 2020, to help the tenants move in.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Although the written tenancy agreement was not signed by the tenants, I accept that a tenancy was formed.

Under section 32(1) of the Act, 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.

In this case, although the landlord said the condition of the rental unit was “quite good,” I have reviewed the considerable photographic evidence of the tenants. I find that on the day the tenancy was to begin, the condition of the rental unit was filthy, in a state of disrepair, unhygienic and unsafe.

For instance, I find the cabinet under the sink and the oven disturbing. My viewing of the photo shows the cabinet under the sink to be filthy, stained with mould and ripped shelf paper, and an oven which appeared to not have been cleaned for quite a long time, if not years. It was hard to tell, as there was burnt on food on the oven floor.

The floors by the oven were dirty, the counter tops were stained.

I find the photographs show mould in many areas of the rental unit, including walls, the bathroom, and windowsills. The walls were in obvious need of repainting, as there were drawings on them. There were missing bathroom tiles and what appeared to be cigarette tar stains on the ceilings.

Perhaps the most troubling issue of all was the smoke alarm, which looked to be old, and was hanging by one wire. I find this to be a fire and safety issue for the tenants. I

am very concerned the landlord expected the tenants to move into an apartment building with a non-functioning smoke alarm.

For these reasons, I find the rental unit failed to meet health, safety and housing standards required by law and was not suitable for occupation, in clear violation of the Act.

Tenancy Policy Guideline states that where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances, such as the landlord is expected to provide the premises as agreed upon and in a state conforming with health and safety standards as required by law.

I agree with the Policy Guideline and I find that the evidence shows that the rental unit did not conform to health or safety standards, as described above, which in this case required the tenants to find another place to stay in the alternative on extremely short notice.

Additionally, section 44(1)(f) of the Act indicates one way a tenancy ends is when the director orders that the tenancy is ended.

As I have found that the rental unit did not conform to health or safety standards, I order that the obligations of the tenancy ended on September 1, 2020, the day the tenants were to move into the rental unit.

I therefore find the landlord is not entitled to the monthly rent for September 2020, and I **dismiss** their application, **without leave to reapply**.

As I have dismissed their application, I **order** the landlord to return the tenants' security deposit of \$800, immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$800, which is included with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Cautions to the landlord –

After hearing from the landlord, it is unclear to me why the landlord expected the tenants to move into the rental unit at all. I find the fact the landlord provided the rental unit in this condition, expecting the tenants to pay full rent, disturbing.

I find it unreasonable that the landlord's remedy for the unacceptable state of the rental unit was for the tenants to file for a reduction in their monthly rent with the RTB.

The landlord's expectation that it is acceptable for the tenants to move into the rental unit in that condition and without a working smoke alarm, in a multi-unit apartment building, causes me to consider whether the landlord has rented other rental units in the same condition to other tenants. The lack of a smoke alarm is a **fire and safety violation**, not only for these tenants, but for other tenants in the residential property.

I find it necessary to caution the landlord that if these instances continue to occur, and they are brought before the Residential Tenancy Branch's Dispute Resolution Services, they could be subject to an administrative penalty up to \$5,000.00 for each day the contravention continues.

If the landlord would like to review their legal obligations, the landlord may want to review relevant sections of the Act. In all cases, the landlord may consult with staff at the Residential Tenancy Branch if they have questions about their legal obligation.

The landlord is informed that the RTB now has a Compliance and Enforcement unit, who deal specifically with administrative penalties. If they so choose, this Decision may be used for their consideration, if needed in the future.

Conclusion

For the above reasons, the landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenants' security deposit of \$800 immediately and the tenants are granted a monetary order of \$800.

The landlord has been issued cautions.

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 18, 2021

Residential Tenancy Branch