



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that on July 15, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 20, 2021 was sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On December 27, 2021 the Landlords submitted additional evidence to the Residential Tenancy Branch. The male Landlord stated that this evidence was served to the Tenant, via WhatsApp mail, on December 27, 2021. He stated that it was previously served to the Tenants on June 11, 2021. The female Tenant acknowledged receiving this evidence in June of 2021 and again on December 27, 2021. As the female Tenant acknowledged receiving this evidence on December 27, 2021, via WhatsApp, I find that it was sufficiently served to the Tenants pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

On January 07, 2022 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was left in the Landlord's mailbox on January 07, 2022. The male Landlord stated that this evidence was received on January 10, 2022.

The parties were advised that I would accept the Tenants' evidence even though it was not served to the Landlords at least seven days prior to the hearing. I find it reasonable to accept the Tenants' evidence due to the fact the Landlords did not serve the bulk of their evidence to the Tenants until December 27, 2021, which is an unreasonable delay given that the evidence was available when this Application for Dispute Resolution was filed on June 20, 2021.

The Landlords were advised that if they required more time to consider the Tenants' evidence, I would adjourn the hearing for that purpose. The male Landlord stated that the Landlords were prepared to proceed with the hearing and that an adjournment was not required.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began on June 01, 2020;
- the tenancy agree was for a fixed term;
- the end of the fixed term was May 31, 2021;
- the male Tenant moved out of the rental unit several months prior to May 31, 2021;
- the Tenants agreed to pay monthly rent of \$1,195.00 by the first day of each month;
- the Tenants paid a security deposit of \$597.50; and

- the Tenants' left a forwarding address in the Landlord's mailbox on June 16, 2021.

The Landlords are seeking compensation for unpaid rent, in the amount of \$500.00. The parties agree that the Tenants only paid monthly rent of \$1,095.00 for January, February, March, April, and May of 2021.

The female Tenant stated that she and the female Landlord agreed that rent for the aforementioned five months would be reduced by \$100.00 per month. The female Landlord stated that she did not agree to a rent reduction for those months.

The Landlords are seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The Landlord submitted photographs, which the male Landlord stated were taken on May 31, 2021. Both parties agree that the photographs represent the condition of the rental unit on May 31, 2021.

The female Tenant stated that they returned the keys to the Landlords on May 30, 2021; that they offered to return to the rental unit on May 31, 2021 to complete additional cleaning; and that the Landlords did not make arrangements to provide them with access to the rental unit for the purposes of cleaning.

The male Landlord stated that the Tenants did not offer to return to the rental unit for the purposes of completing additional cleaning. The Tenant was unable to cite evidence of their offer to complete additional cleaning.

The Landlords submitted an invoice to show that the Landlords were charged \$105.00 for cleaning.

The parties agree that the Tenants did offer to return to the unit to repair damage to walls. The parties were advised that this is not relevant to the matter before me, as the Landlords are not claiming compensation for repairing damaged walls. The female Tenant stated that they would have completed additional cleaning if the Landlords had provided them with access to the unit for the purposes of repairing walls.

Analysis

On the basis of the undisputed evidence, I find that the Landlords and the Tenants entered into a tenancy agreement that required the Tenants to pay monthly rent of \$1,195.00 by the first day of each month.

Section 26 of the *Act* requires tenants to pay rent when it is due unless the tenant has a right under this *Act* to deduct all or a portion of the rent. When a tenant submits that they have a right to withhold a portion of the rent, the tenant bears the burden of proving that submission.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof will typically fail to meet the burden of proof.

I find that the Tenants have submitted insufficient evidence to establish that the female Landlord agreed to reduce the monthly rent by \$100.00 for January, February, March, April, or May of 2021. In reaching this conclusion I was heavily influenced by the absence of evidence that sufficiently corroborates the female Tenant's testimony regarding the alleged rent reduction and by the female Landlord's testimony that she did not agree to the rent reduction.

Although the Tenants submitted a text message from the male Tenant in which he asserts that there was an agreed upon rent reduction, and text messages in which he is clearly attempting to have the Landlords confirm that rent was reduced, I find it noteworthy that the Landlords never confirm that there was a verbal agreement to reduce the rent. While I accept that the Tenants believed there was a verbal agreement to reduce the rent, I am not satisfied that the Landlords agreed to that rent reduction. Had the Landlords agreed to the rent reduction, I would it reasonable to expect that they would have confirmed that agreement by text message, given the number of requests sent by the Tenants. I therefore find that the text messages have limited evidentiary value.

As the Tenants have failed to establish that they had the right to withhold a portion of their rent, I find that they still owe the Landlords \$500.00 in rent for January, February, March, April, or May of 2021.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or

loss was the result of a breach of the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the female Tenant, I find that she returned the keys to the rental unit on May 30, 2021. I therefore find that this tenancy ended on May 30, 2021, pursuant to section 44(1)(d) of the *Act*, which specifies a tenancy ends when the rental unit is vacated.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As this tenancy ended on May 30, 2021 when the keys to the unit were returned, the Tenants were obligated to comply with section 37(2)(a) of the *Act* by May 30, 2021. The Landlords were under no obligation to provide the Tenants with access to the rental unit after May 30, 2021 even if they were willing to return to the unit and complete additional cleaning.

On the basis of the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. As the evidence shows the Landlord paid \$105.00 to clean the unit, I find they have established their cleaning claim of \$100.00.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$700.00, which includes \$500.00 for unpaid rent, \$100.00 for cleaning, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$597.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$102.50. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 13, 2022

Residential Tenancy Branch