



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPM, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 27, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2022 was sent to each Tenant, via registered mail. He stated that the documents were sent to the male Tenant at the rental unit and to the female Tenant at a forwarding address provided by the female Tenant. The Landlord submitted a Canada Post documentation that corroborates this testimony.

The female Tenant acknowledged receipt of the aforementioned documents.

In the absence of evidence to the contrary, I find that these documents have been served to both Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*. As the documents were properly served to the Tenants, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the male Tenant.

On July 22, 2022 the Landlords submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to both Tenants on June 04, 2022. He stated that the documents were sent to the male Tenant at the rental unit and to the female Tenant at a forwarding address provided by the female Tenant. The female Tenant acknowledged receipt of these documents.

I find that the Landlords' evidence package of July 22, 2022 was properly served to the Tenants and it was accepted as evidence for these proceedings.

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.

Preliminary Matter #1

On September 06, 2022 the Landlords submitted two Amendments to the Application for Dispute Resolution, in which the Landlords withdrew the application for an Order of Possession and they added a claim for money owed or compensation for damage or loss. Details of the monetary claim were listed on the Amendment in which they added the monetary claim.

The Landlord stated that the Amendments and associated documents were served to the male Tenant, via email, on July 23, 2022. The Landlords have been granted a Substituted Service Order that authorizes them to serve documents to the male Tenant at the email address used for service. I therefore find that the male Tenant has been served with the Amendment in accordance with that Substituted Service Order.

The Landlord stated that the Amendments and associated documents were served to the female Tenant, via email, on July 23, 2022. As the Tenant acknowledged receipt of the Amendment, I find that it has been sufficiently served to her, pursuant to section 71 of the *Act*.

As the aforementioned documents were served to the Tenants, I find that the Application for Dispute Resolution was amended to withdraw the application for an Order of Possession and to add an application for a monetary Order.

As the aforementioned documents were served to the Tenants, I find that the evidence submitted to the Residential Tenancy Branch on September 06, 2022 should be accepted as evidence.

Preliminary Matter #2

In the Monetary Order Worksheet, the Landlords submitted with the Amendment to the Application for Dispute Resolution, the Landlords listed various monetary claims. In the list of claims the Landlords appear to be reducing the amount of their claim by the security deposit of \$650.00 that was paid by the Tenants.

I find that reducing the amount of the claim on the Monetary Order Worksheet by the amount of the security deposit is not sufficient notice to the Tenants that the Landlords are amending the Application for Dispute Resolution to include a claim to retain the security deposit. This information should have been clearly provided in an Amendment to the Application for Dispute Resolution.

I therefore find that the Application for Dispute Resolution has not been properly amended to include a claim to retain the Tenants' security deposit and that matter will not be considered during these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to a monetary Order for unpaid rent/utilities; lost revenue; and cleaning costs?

Background and Evidence

The male Landlord and the female Tenant agree that:

- this tenancy began on August 01, 2021;
- monthly rent of \$1,275.00 was due by the first day of each month;
- the Tenants were required to pay 35% of hydro, gas, and water bills;
- the Landlord and the female Tenant signed a mutual agreement to end the tenancy, which declared the tenancy would end on May 31, 2022;
- the female Tenant vacated the unit sometime in May of 2022; and
- the male Tenant vacated the unit on June 15, 2022.

The Landlords are seeking compensation for unpaid rent from June of 2022, in the amount of \$72.50. The male Landlord stated that because the male Tenant remained in the unit until June 15, 2022, he was obligated to pay 50% of the monthly rent, which was \$637.50. He stated that the Tenants only paid \$565.00 in rent for June of 2022.

The Landlords are seeking compensation for unpaid utilities, in the amount of \$1,090.93.

The Landlords submitted several utility bills and a list of bills that were not paid by the Tenants, which is titled "Summary of Unpaid Utility Bills". The male Landlord stated that the Tenants have not paid their portion of the charges on the list of unpaid utility bills. The female Tenant stated that she paid her portion of those charges to the male Tenant and she now understands that he did not pay the Tenants' portion of the listed charges.

The Landlords are seeking compensation for cleaning, in the amount of \$420.00. The Landlords submitted photographs of the unit that were taken at the end of the tenancy which he submits show that cleaning was required.

The Landlords submitted an invoice for the cost of cleaning, in the amount of \$300.00. He stated that the Landlords were unable to submit an invoice for the cost of removing garbage, as he paid cash to a third party he located on a popular website.

The Landlords are seeking compensation for lost revenue, in the amount of \$637.50, for the latter portion of June of 2022.

The male Landlord stated that on June 12, 2022 the male Tenant told the Landlords he would be vacating on June 15, 2022. He stated that the Landlords cleaned the unit; that they advertised it on a popular website; and that they were able to find a new tenant for July 01, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were required to pay monthly rent of \$1,275.00 by the first day of each month plus 35% of hydro, gas, and water bills.

On the basis of the undisputed evidence, I find that this tenancy ended on May 31, 2022 in accordance with the mutual agreement to end tenancy signed by the Landlord and the female Tenant.

On the basis of the undisputed evidence, I find that the male Tenant did not vacate the unit until June 15, 2022. I therefore find that the Tenants were obligated to pay 50% of the rent due for June of 2022, which was \$637.50. As the Landlord received \$565.00 in rent for June, I find that he is entitled to another \$72.50 in rent for June of 2022.

On the basis of the undisputed evidence, I find that the Tenants have not paid their portion of the charges listed on the Summary of Unpaid Utility Bills. As the total charges are \$3,116.94, I find that the Tenants remain obligated to pay 35% of the charges, which is \$1,090.93.

On the basis of the testimony of the male Landlord and the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when the rental unit was not left in reasonably clean condition at the end of the tenancy. I therefore find that the Landlords are entitled to compensation for cleaning the unit, in the amount of \$420.00.

I find that the male Tenant failed to comply with section 44(1)(c) of the *Act* when he did not vacate the rental unit at the end of the tenancy on May 31, 2022. I therefore find that the Tenants must compensate the Landlords, pursuant to section 67 of the *Act*, for any losses the Landlords experienced as a result of the male Tenant not vacating the unit.

I find that the Landlords made reasonable efforts to re-rent the unit but they were not able to find a new tenant until July 01, 2022. I find that Landlords would likely have been able to find a new tenant for June 01, 2022 if the male Tenant had vacated the rental unit on May 31, 2022 and left it in reasonably clean condition. I therefore find that the Tenants must pay \$637.50 to the Landlords for the loss of revenue the Landlord experienced in the latter portion of June of 2022.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$2,320.93, which includes \$72.50 in unpaid rent, \$1,090.93 in unpaid utilities, \$420.00 for cleaning, \$637.50 for lost revenue and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlords a monetary Order for the balance of \$2,320.93. In the event that the Tenants do not 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.

Although I have not considered an application to retain the Tenants' security deposit, the parties are advised that section 71(2)(b) of the *Act* stipulates that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As I have ordered the Tenants to pay \$2,320.93 to the Landlords, the Landlords now have the right, if they choose, to retain the Tenants' security deposit in partial satisfaction of this monetary claim, pursuant to section 71(2)(b) of the *Act*.

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: September 21, 2022

Residential Tenancy Branch