



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 6, 2014, by the Landlords to obtain a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord L.N. who stated she was represented both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Tenant G.A. appeared and indicated he was separated from the other Tenant and he was personally served with notice of this proceeding. The Landlord stated they were not able to serve the other Tenant, C.N. as they did not know where she was currently located.

The parties gave affirmed testimony and confirmed receipt of evidence served by the Landlords. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords met the burden of proof to obtain a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on April 1, 2010 and switched to a month to month tenancy after April 1, 2011. The Tenants were required to pay rent of \$1,000.00 on the first of each month. The parties conducted a walk through inspection and completed a condition inspection report form at move in April 12, 2010.

The Landlord testified that despite the tenancy agreement indicating a \$500.00 security deposit had been paid April 1, 2010, no payment for the deposit was ever received. She indicated that they have a property manager / real estate agent who managed their rental property as they do not reside in the municipality where the rental unit is located. The Landlord stated that she did not know if her property manager scheduled a move out inspection with the Tenants.

The Landlord argued that on July 15, 2013 the Tenant gave verbal notice to end their tenancy effective July 31, 2013 and they were not able to re-rent the unit until September 1, 2013. When they attended the unit a few days after July 31, 2014, they found that the rental unit required additional cleaning and carpet cleaning.

The Landlords filed their application for Dispute Resolution seeking a monetary order for \$1,300.00. They indicated in the details of their dispute on the application form that their claim was comprised of \$1,000.00 for one month's lost rent, \$150.00 for cleaning, \$100.00 carpet cleaning, and recovery of the \$50.00 filing fee. The Landlord's evidence included a written statement indicating the Landlord was now seeking a monetary claim of \$1,786.68 which included additional items and increased amounts that were not listed on the Application for Dispute Resolution. The Landlord confirmed that she had not amended her Application with the Residential Tenancy Branch and had not served the Tenants with an amended application.

The Landlord argued that when she filed her application on June 6, 2014 the amounts for cleaning and carpet cleaning were estimated amounts because she had not yet received the receipts for work that was performed back in August 2013.

The Tenant disputed all items claimed by the Landlords and argued that he was of the understanding that he did not owe the Landlords anything further. He submitted that on July 15, 2013, he provided both verbal and written notice to end his tenancy, to the male Landlord, who was not in attendance at this hearing. He argued that he had discussions with the male Landlord about the Landlords' intent to sell the property and that it was the Landlord who suggested that they move out to avoid having an unsecure home while it is being shown by real estate agents.

The Tenant testified that he had paid the \$500.00 security deposit in cash, directly to the male Landlord and that they had cleaned the rental unit and had had the carpets cleaned on several occasions. He noted that the condition inspection report form

indicates that the carpets were permanently stained and other areas that required cleaning at the beginning of the tenancy.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents and evidence. The second Tenant, C.N., has not been properly served the Application for Dispute Resolution as required. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding and the monetary claim against C.N. is dismissed without leave to reapply.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant was required to provide written notice to the Landlord no later than June 30, 2013, if he wished to end his tenancy July 31, 2013. The Tenant provided Notice on July 15, 2013, and the Landlords were not able to re-rent the unit until September 1, 2013.

Based on the above, I find the Tenant(s) did not provide proper notice to end this tenancy in accordance with section 45(1) of the Act, which caused the Landlords to suffer a loss of rent for August 2013. Accordingly, I award the Landlords lost rent in the amount of **\$1,000.00**.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the

state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of sufficient evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Tenant disputed the Landlord's submission and argued that the rental unit had been cleaned and the stains to the carpet were pre-existing. In absence of a move-out condition inspection report form or photographs to prove the contrary, I find the Landlord provided insufficient evidence to prove the condition of the unit at the end of the tenancy; and the claim for cleaning and carpet cleaning is dismissed, without leave to reapply.

Section 59(2) of the Act stipulates that an application for dispute resolution must be in the applicable form and must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The *Residential Tenancy Branch* provides information and fact sheets detailing how a claim and evidence must be compiled and served upon each party. A Monetary Order worksheet and instructions on how to serve evidence are amongst those publications.

The Landlord submitted a written statement with her evidence indicating she was now seeking additional amounts for items listed on her original application and additional items such as utilities and service costs. The Landlord did not amend her original application and did not serve the Tenant proper notice that she was amending her claim. Accordingly, I dismiss the claim for additional amounts and items, without leave to reapply.

In the presence of disputed verbal testimony regarding the payment or non-payment of the security deposit I turned to the evidence of the written tenancy agreement which stipulates at page 3 that indicates "The tenant is required to pay a security deposit to \$500.00 by 1 April 2010.

The tenancy agreement was signed by all parties on April 12, 2010, 11 days after the security deposit was required to be paid and there was no documentary evidence before me that would indicate the security deposit had not been paid. Accordingly, I find the Tenants had paid \$500.00 for the security deposit on or before April 1, 2010.

The Landlords have been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$35.00**.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of August 2013 Rent	\$1,000.00
Filing Fee	<u>35.00</u>
SUBTOTAL	\$1,035.00
LESS: Security Deposit \$500.00 + Interest 0.00	<u>-500.00</u>
Offset amount due to the Landlords	<u>\$535.00</u>

Conclusion

The monetary claim against Tenant C.N. is HEREBY DISMISSED, without leave to reapply.

The Landlords have been awarded a Monetary Order for **\$535.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be 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 *Residential Tenancy Act*

Dated: October 08, 2014

Residential Tenancy Branch

