



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND, MNDC, MNR, MNSD, OPB, O, FF
For the tenants: MNDC, MNSD, FF, O

Introduction

This was the reconvened hearing dealing with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The original hearing was adjourned due to the landlord’s contention that she had not received the tenants’ application.

The landlord applied for a monetary order for money owed or compensation for damage or loss, unpaid rent and damage to the rental unit, for authority to retain the tenants’ security deposit, an order of possession for the rental unit based upon an alleged breach of agreement with the landlord, for other relief and for recovery of the filing fee.

The tenants applied for a monetary order for money owed or compensation for damage or loss, for a return of their security deposit, for other relief and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Preliminary Issue 1- Subsequent to the hearing, the landlord submitted evidence to the Residential Tenancy Branch (“RTB”), with a covering letter suggesting that I asked to see the items provided in that late submission of evidence. I note that during the hearing, I asked questions about the landlord’s evidence in ascertaining whether or not her application had merit. I did not request that she submit evidence after the hearing.

The landlord’s late submission of evidence appears to be an effort to rehabilitate the landlord’s original application and evidence.

I have not viewed the remaining evidence, other than the covering letter, and it was not considered for purposes of this Decision, as I have only reviewed and considered relevant evidence submitted in a timely manner prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue 2- The landlord filed for an order of possession, although the tenants had already vacated the rental unit at the time of her application. Therefore it was not necessary to consider her request for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, authority to retain the tenant's security deposit and to recover the filing fee?

Are the tenants entitled to a monetary order, to have their security deposit returned and to recover the filing fee?

Background and Evidence

This 1 year, fixed term tenancy began on or about June 4, 2011, was set to expire on May 5, 2012, actually ended on or about January 1, 2012, when the tenants vacated the rental unit, monthly rent was \$1750.00 and the tenants paid a security deposit of \$875.00 on or about May 8, 2011.

The rental unit was in the lower suite, and the landlord lived in the upper suite.

Landlord's application:

The landlord's monetary claim is as follows:

Unpaid rent to end of fixed term	\$8750
Locksmith charge	\$123.20
Wall damage	\$150
Missing items	\$27.97
HST on missing items	\$31.33
Time and travel to replace	\$50
Filing fee	\$100
Total	\$9564.84

The landlord's relevant evidence included a tenancy agreement, an emailed notice from the tenants of their intent to vacate on January 1, 2012, internet advertisements of the rental unit, dated December 1, 4, and 24, 2011, email communication between the parties, discussing the increased cost of the internet/television provider for an enhanced television package, documents which were labelled move-in inspection and move-out inspection, printouts from internet sources for missing items, an invoice for a locksmith, a copy of a photo of the wall, and a quote for wall repair.

In support of her application, the landlord testified to the following:

Loss of revenue-The landlord stated that she is entitled to loss of revenue for the balance of the fixed term, due to the tenants' breaking of the fixed term in the tenancy agreement when they vacated the rental unit early.

When questioned, the landlord stated that she did undertake steps to re-rent the rental unit by advertising the same on the internet. As mentioned the landlord submitted three internet listings, and when questioned, the landlord agreed that she had not reduced the asked for monthly rent.

Unpaid utilities- The landlord stated that she agreed to pay for the utilities for the first 6 months of the tenancy, after which the tenants were to pay for their own utilities. The landlord stated she is entitled to be compensated for the enhanced television package as the tenants asked for the increased service and agreed to pay for it.

Locksmith charge-The landlord submitted that the tenants did not appear at the agreed upon time at the end of the tenancy and did not return the keys to the rental unit, which led to the landlord having to replace the locks.

Damage to walls-The landlord submitted that the tenants damaged the walls, which will require repairing.

In response to the landlord's application, the tenants submitted as follows:

Loss of revenue-The tenant stated that within 2-3 weeks after the tenancy began, he realized they were in a situation where the landlord would be intrusive upon them, which could partly be shown by the 100+ emails received from the landlord during the first six months of the tenancy.

The tenant submitted that the landlord expected work from the tenants beyond what was required in a tenancy arrangement. The tenant submitted that they were forced to tender a notice to vacate after a confrontation by the landlord with the female tenant and their children, due to safety and well-being concerns.

The tenant submitted that the landlord yelled at his family over alleged missing items and that his children were afraid to play in the yard.

Unpaid utilities-The tenant stated that they were bullied into an agreement about the utilities and they never agreed to pay over the usual amounts, which they have.

Locksmith charges-The tenant submitted that he never received a response from his notice of intent to vacate, and on December 1, 2011, the landlord disconnected the tenants' internet service, which meant that they never received a notice of a walk through.

The tenant stated that they left three phone messages to perform a move out inspection, with no response.

Damage to walls-The tenant stated there was just a bit of a scratch on the wall and the wall was not damaged.

Tenants' application:

The tenants' monetary claim is as follows:

Security deposit, doubled	\$1750
Lost wages from internet disconnection	\$1000
Loss of quiet enjoyment	\$1500
Mental health, stress, anxiety, insomnia	\$4800
Moving expenses	\$716.06
Saw	\$59.99
Saw blade	\$12.54
Filing fee	\$100
Total	\$10,558.59

The tenant's relevant evidence included written summaries of their position as to loss of quiet enjoyment, a listing of email correspondence from the landlord, an addendum to the tenancy agreement after the tenancy began, purportedly containing new requirements from the landlord, copies of photographs of the rental unit, internet listings for the rental unit indicating the tenants' attempts to rent the rental unit, a mutual agreement to end the tenancy, which was not signed by the landlord, notices from the landlord concerning lawn care, moving invoices, and email communication between the parties.

In support of their application, the tenants testified to the following:

Return of the security deposit-The tenants submitted that due to the landlord not returning their security deposit, they are entitled to its return, doubled.

Compensation for labour-The tenant submitted that the landlord wanted the tenant to install a walkway on the premises and that he and his father spent a large amount of time in installing the walkway. The tenant submitted that he agreed to assist in the project, but not to complete the entire project himself.

When questioned, the tenant stated there was no agreement concerning the walkway.

Lost wages from internet disconnection-The tenant submitted that on December 21, 2011, the landlord disconnected the internet, which meant that he was unable to work from home.

Loss of quiet enjoyment and mental health, stress and anxiety and moving expenses-The tenant stated that throughout the tenancy, the tenants did not have quiet

enjoyment of the rental unit, as the property was an eyesore and they had no access to the backyard. The tenant further submitted that every time they turned around, the landlord was there, breaching their right to privacy.

The tenants submitted that the landlord would just appear unannounced at their rental unit, one time when the male tenant was in his bathrobe.

The tenants submitted that the landlord's behaviour caused them great stress and anxiety and that their work suffered as a result.

The tenants contended that the interference, from the landlord, such as constant knocking on the door, caused them to end the tenancy early, which caused them to incur moving expenses before they were ready.

The tenant stated that he is not a confrontational person and was forced to leave due to the landlord's behaviour.

In response, the landlord submitted that the walkway project was something that the parties agreed upon and that the tenant agreed to help out around the house doing some chores normally associated with males.

The landlord denied depriving the tenants of their rights to quiet enjoyment and that the tenants had full access to the yard.

The landlord also questioned the pills taken by the tenants, submitting that they were sleeping pills which the tenants had already been taking.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, both parties bear the burden of proof.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

Loss of revenue-

Under Section 45 (2) of the Residential Tenancy Act, among other requirements, a tenant may not end a fixed term earlier than the end of the fixed term, which in this case was May 31, 2012. I find the tenants' notice of November 30, 2011, that they were ending the tenancy as of January 1, 2012, to be deficient notice. However, the landlord is required to take reasonable measures to re-rent the rental unit as expeditiously as possible in order to mitigate her loss, which is step four of her burden of proof.

I find the landlord submitted insufficient evidence that she mitigated her loss. In reaching this conclusion, I was influenced by the lack of proof of advertising of the rental unit or proof on any other methods of re-renting. The evidence submitted by the landlord shows an advertisement placed on an internet site on December 1 and 4, 2011, and then no other advertisement until December 24, 2011. The landlord's evidence shows that she did not market the rental unit consistently and not at all for almost a three week period in December, which led me to conclude there was very little attempt on the landlord's part to mitigate her loss.

Without further proof, I cannot conclude that the landlord took reasonable measures to mitigate her loss for January, February, March and April, 2012. I therefore dismiss her claim for loss of revenue for those months, without leave to reapply.

As to loss of revenue for May 2012, the landlord has yet to sustain a loss for this month or any part thereof. I therefore dismiss her claim for loss of revenue for May 2012, with leave to reapply.

Unpaid utilities-

The landlord stated that she agreed to pay for the utilities for the first six months, with the exception of the enhanced television package. I therefore cannot conclude from the landlord's evidence that the demands she made for reimbursement for the internet/television provider in November and beyond exceeded her agreement. It appears from the email communication that the tenants paid for the enhance television package.

As to the bills for the hydro and gas bill for December and beyond, the landlord failed to provide evidence of the bills or any written agreement for a division of the bills.

As I find the landlord submitted insufficient evidence of the tenants' responsibility for utilities, I dismiss her claim for unpaid utilities, without leave to reapply.

Locksmith charge-

Under section 37 of the Act, a tenant is required to return the keys to the rental unit at the end of the tenancy. In this case, the tenants confirmed that the keys were not returned, as no one asked for them.

I therefore find that the landlord has established a monetary claim of \$123.20 for a locksmith charge.

Wall damage-

The landlord confirmed that the amount claimed was an estimate and that she has not yet sustained a loss. I therefore find that the landlord has submitted insufficient evidence of steps 2 and 3 of her burden of proof and I therefore dismiss her claim for \$150.00, without leave to reapply.

Missing items, HST, time and travel-

I find the landlord submitted insufficient evidence that if in fact there were missing items, that the tenants were responsible. I also find that the landlord failed to establish a loss for these items. I therefore dismiss her claim, without leave to reapply.

Filing fee-

I find the landlord's application had partial merit and I award her a partial recovery of her filing fee, in the amount of \$50.00.

I find the landlord has established a total monetary claim of \$173.50, comprised of a locksmith charge of \$123.20 and partial recovery of the filing fee of \$50.00.

Tenants' Application:

Security deposit, doubled-

I find that the landlord complied with Section 38(1) of the *Act* by making an application for dispute resolution claiming against the tenants' security deposit within 15 days after the date the tenancy ended and therefore the tenants are not entitled to receive double their security deposit. However, I therefore find that they are entitled to a return of the base amount of their security deposit of \$875.00.

Compensation for labour-

I find the addendum to the tenancy agreement to be unclear to establish that the walkway project was a part of the tenancy; rather the claim for compensation for labour is more in the way of an employment agreement, which is not within the jurisdiction of the Residential Tenancy Act. I therefore find the tenants submitted insufficient evidence that they suffered a loss under the Residential Tenancy Act and I dismiss their claim for \$720.00.

Lost wages from internet disconnection-

I find the tenants submitted insufficient evidence of lost wages due to the cancellation of their internet connection and I dismiss their claim for \$1000.00

Loss of quiet enjoyment-

Section 28 (b) of the Act provides that tenants are entitled to quiet enjoyment including the right to privacy and freedom from unreasonable disturbance.

In this case, I find that the tenants submitted insufficient evidence that they addressed their concerns of a loss of their quiet enjoyment with the landlord during the tenancy by either putting their concerns in writing or filing for dispute resolution and therefore the landlord could not make reasonable attempts to address those concerns during the course of the tenancy. As such, I find that the tenants failed to prove that they took reasonable measures to mitigate their loss and I dismiss their claim for \$1500.00.

Mental health, stress, anxiety, insomnia-

I find the tenants submitted insufficient evidence that the landlord's actions caused them to suffer stress, anxiety, or insomnia, which was detrimental to their mental health. I found no medical records or any other records which documented the tenants' claim as I find a picture of prescription pill bottles to be insufficient evidence.

Additionally Residential Tenancy Branch Policy Guideline section 16, suggests this to be a claim in tort, which is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim rises to that requirement.

I therefore dismiss the tenants' claim for \$4800.00.

Moving expenses-

I find that the tenants are not entitled to compensation for electing to vacate the rental unit early. In the event that a tenant has concerns about issues during the tenancy a tenant has the option of ending the tenancy in accordance with legislation, communicating with the landlord in attempt to resolve the concerns, or filing an application for dispute resolution to resolve the dispute. In these circumstances the tenants opted to end the tenancy early. As the tenants did not take appropriate measures to address their concerns, I therefore find that the tenants are not entitled to compensation arising from their decision to end the tenancy early.

Saw and saw blade-

I find the tenants submitted insufficient evidence that they suffered a loss for these items or that the landlord was attributable for a loss. I therefore dismiss their claim for \$72.53.

Filing fee-

I find the tenants' application had partial merit and I award them a partial recovery of their filing fee, in the amount of \$50.00.

I therefore find that the tenants have established a monetary claim in the amount of \$925.00, comprised of their security deposit return of \$875.00 and partial recovery of the filing fee of \$50.00.

Conclusion

I have offset the amount of the landlord's monetary claim of \$173.50 with the tenants' monetary claim of \$925.00 and pursuant to section 67 of the Act, I therefore grant the tenants a monetary order in the amount of \$751.50.

I am enclosing the monetary order for \$751.50 with the tenants' Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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: May 04, 2012.

Residential Tenancy Branch