



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC and FF

This application was brought by the landlords on May 3, 2012 seeking a monetary award for unpaid rent, damage or loss under the legislation or rental agreement, damage to the rental unit and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This application requires a decision on whether the landlords are entitled to a monetary award as requested.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on May 1, 2007 and ended in February 2012. Rent was \$1,000 per month at the end of the tenancy and the security deposit of \$450 plus interest was returned to the tenants in late January 2012.

Neither party complied strictly with the requirements of the *Act* in ending the tenancy.

By letter dated January 1, 2012, the landlords informed the tenants that they wished to move back into the rental unit on April 1, 2012.

Such a letter does not constitute enforceable notice under section 49 of the Act which requires that, Notice to End Tenancy for landlord use must be given on the prescribed form which includes important information for tenants, including advice of their right to one-month's free rent and the right to end the tenancy on 10 days notice.

The tenants then gave Notice on January 23, 2012 that they would be vacating the rental unit on February 1, 2012, three days less than required by section 51 of the Act where there is a valid Notice to End for landlord use. The tenants further breached by failing to provide vacant possession on February 1, 2012 as stated in their notice, with a representative of the landlord having to retrieve the keys on February 14, 2012, with the tenants having left a substantial amount of personal property behind much of which remained there at the time of the present hearing, nearly six months later.

The landlords are at a further disadvantage with respect to the claims for damage to the rental unit and return of property as there were no move-in or move-out condition inspection reports completed as required by sections 23 and 35 of the *Act*.

The landlord claims and I find as follows:

Rent for February 2012 - \$1000. As noted, this claim is difficult to assess because notices given by both parties did not meet the requirements of the *Act*. However, taking into consideration that the landlords' letter indicated their intention to move back into the rental unit, I find it was reasonable for the tenants to search for new accommodation in what is said to be a limited market. However, given the tenants' short notice and subsequent overholding in view of the contestable notice, I find that they are entitled to only one-half of the free month's rent. Therefore, I allow \$500 on this claim.

Storage - \$580. The landlords submitted photographic evidence showing that the tenants had left behind an uninsured car blocking entrance to the garage, two motorcycles, a snowmobile and quantities of paint cans and other items and claim \$120 per month storage fees for the period from February through May 2012. At the time of the hearing, all but the car remained. Given the confusion over when the tenancy ended, I do not allow the February portion of the claim, but I add June 2012 to the storage period with strong direction to the tenants to remove their property by June 30, 2012. With February disallowed and June added, the claim is allowed in the full amount.

Damage to corner of building, broken windows and screens, broken door, kitchen and bath flooring, and return of landlords' property. Taking into account that I have no move-in/move-out condition inspection reports for comparison purposes and no third party corroborating evidence, and in consideration of normal wear and tear and unknown depreciation values, and in the firm denial of each of these claims on the part of the attending tenant, I find that the landlords have not met the burden of proof required to substantiate these claims. Therefore, they are dismissed.

Filing fee - \$50. Having found substantial merit in the landlords' application, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

Thus, I find that the tenants owe to the landlords an amount calculated as follows:

Rent for February 2012	\$ 500.00
Filing fee	<u>50.00</u>
TOTAL	\$1,130.00

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for **\$1,130.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: June 26, 2012.

Residential Tenancy Branch