



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the Landlord: MND, MNDC, FF
For the Tenant: MNDC, MNSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenants
- compensation for a monetary loss or other money owed
- recovery of the filing fee

The Tenants applied for the following:

- compensation for a monetary loss or other money owed
- a return of their security deposit
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

All parties were present and each confirmed receipt of the other's proceeding package and evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants due to alleged damage and other general compensation for damage or loss?

Are the Tenants entitled to general compensation for damage or loss and a return of their security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

This fixed-term tenancy began August 5, 2023, ended on December 1, 2023, according to the Landlord or November 30, 2023, according to the Tenants. The monthly rent was \$3300 and the Tenants paid a security deposit of \$1650 on July 30, 2023. The fixed-term on the tenancy agreement was through August 5, 2024. The security deposit has been returned to the Tenants.

Landlord's application

The Landlord claims \$572 for the cost of cleaning and \$4950 for loss of rent revenue.

The Landlord confirmed there was no move-in or move-out condition inspection of the rental unit with the Tenants.

Cleaning cost

The Landlord testified they had hoped the rental unit would be in the same condition in which the Tenants received the rental unit, but it was not. They did a walk-through of the rental unit with Tenant, KD, after the tenancy ended and KD agreed to some things. The rental unit was not left in a state that was ready to be shown. The Landlord filed a cleaning receipt, a carpet cleaning receipt, and photographs.

The Tenants said the carpet and rental unit were clean and that after they left, the carpet was full of mouse feces and urine.

Loss of rent

The Landlord said when they went to the rental unit on November 18, 2023, the Tenants said they were leaving. By the next day, they knew the Tenants were vacating for sure. After that, according to the Landlord, they had to get the rental unit ready and deal with the mice. On December 15, 2023, they began actively looking for new tenants, by advertising. The Landlord said that there have been zero issues with mice since the Tenants left. The housing development next to the residential property has increased the presence of mice.

The Landlord said they had a new tenant for January 15, 2024. The Landlord claims loss of rent for December 2023, and half a month for January 1-14, 2024.

In response, the Tenant, SN, said the Landlord did not mention anything about rent when they came over on November 18, 2023, but did apologize the tenancy did not work out. KD said the mice issue was a housing complex issue, due to the development.

Tenant's application

The Tenant's claim \$18,813.80, as follows:

#1	Paid rent for 4 months 3300*4	loss of quiet enjoyment	\$13,200
#2	TD bank statement	new bedding due to mice fee	\$247.24
#3	TD bank statement	glass jars for sealing food	\$87.96
#4	Walmart receipt	photos for the evidence	\$51.98
#5	Walmart receipt	photos for evidence	\$57.17
#6	Receipt	filing fee	\$100
#7	Security Deposit	For withholding wrongfully c	\$1650
#8	Canada Post	Sending RTB 41 + RTB 47	\$27.14
#9	Invoice	Moving Expenses	\$2,992.31
#10	Estimate * 4	Time taken out of my day fee	\$400

Rent reimbursement of \$13,200

To support their claim for loss of quiet enjoyment, the Tenant claims they are entitled to full rent reimbursement for the 4 month tenancy. They said they were dealing with a lot during this time, such as a pregnancy, and the mice infestation caused a lot of stress. The Tenant said there were mice all over the rental unit, up on the furniture and bedding, and mice feces and urine on their bedding and clothes. The rental unit was disgusting. Additionally, the first sighting of a mouse was on August 13, 2023 and the mice activity increased over the next few months. The Landlord was never able to resolve the mouse issue. The Tenants claim that the tenancy ended due to the mice infestation.

New bedding and jars

As to the claim for bedding and jars, the Tenant said they bought new bedding because of the feces and urine and bought jars to seal their food to keep mice out. The Tenant said that the pest control wanted them to secure their food and the bedding was no longer useable due to the feces and urine.

Moving costs

As to the Tenant's claim for moving costs to Alberta, the Tenant submitted that it did not make much sense to not move there, as they had family there and KD's job required them to be away for periods of time.

The Landlord had no response.

Wrongfully withheld security deposit

The Tenants agree the Landlord returned their security deposit and it was received on January 4, by e-transfer, however they assert they are entitled to the doubling of their security deposit, or \$1650, as it was not provided in the correct amount of time. They stated they sent their written forwarding address to the Landlord by registered mail on December 18, 2023.

Estimate for time taken out of the Tenant's day

As to the claim for \$400 for time taken out of their day, the Tenant said this claim was based on their time, stress and headaches and they had to alter their day to deal with the ongoing situation. They believed \$100 per month was a reasonable amount of compensation.

In overall response to the mice issue, the Landlord submitted the first time they heard about the mice, they immediately got in touch with the Strata to discuss the issues and talk to the neighbours about their situation as well as leaving a message with Pest Detectives on August 22, 2023. Beginning in October, pest control visited the rental unit and treated. There were recommendations that a door sweep be installed and the Tenant KD said they would install it, but that never happened. The Tenants were also told to keep the garage door closed.

The Tenant stated that the mice issue was reported in August and the pest control did not come to the rental unit until October. They did not just leave the garage door open and the garage was being used for various reasons when it was, such as cleaning their vehicle and their children playing.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows.

Under section 7(1) of the Act, if a landlord or tenant fails to comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party must do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's application

Cleaning costs

The Landlord and the Tenant are required by the Act to inspect the condition of the rental unit at the beginning of the tenancy. The Landlord is required to offer the Tenant at least 2 opportunities for the inspection and the Landlord must also complete the move-in condition inspection report (Report) in accordance with the regulations.

In this case, I find the Landlord breached their obligation under the Act to schedule the move-in inspection and complete the Report, and for this reason, I find there is no record of the condition of the rental unit at the beginning of the tenancy. Further, I was not provided with other evidence, such as photos from the beginning of the tenancy.

Similarly, I find the Landlord failed in their obligation under the Act to conduct a move-out inspection and complete an inspection Report. While the Landlord did provide a small number of photos said to be taken at the end of the tenancy, I find the photos were neither persuasive nor compelling. The photos were undated and extremely close-up in some instances. A paint chip was shown, for example, but I was not provided the same photo from the beginning of the tenancy. Due to the Landlord's breach and unconvincing evidence, I dismiss the Landlord's claim of \$267.50 for cleaning and carpet cleaning of \$304.50, without leave to reapply.

Lost rent

The Landlord claims lost rent for December 2023 of \$3300, and half a month's rent for January 2024, for \$1650, due to the Tenants breaking their fixed-term lease early.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I find the Tenants breached section 45(2) of the Act when they ended the fixed-term tenancy earlier than the date of the fixed-term. The Tenants were responsible for paying the monthly rent each and every month under the terms of the fixed-term tenancy agreement through August 5, 2024. However, the Landlord was required by the Act to do whatever is reasonable to minimize their loss.

Due to the insufficient notice from the Tenants on or about November 19, 2023, and their breach of the Act and tenancy agreement which did not allow the Landlord a full month to advertise and find new tenants, I find it reasonable to award the Landlord compensation of the monthly rent for the month after the Tenants vacated, or \$3300. I

do not accept the Tenant's assertion that the Landlord agreed that they could move-out, presumably without penalty, I find only that the Landlord acknowledged the Tenants were vacating.

I find the Landlord did not do whatever was reasonable to minimize their loss beyond the next month of the end of the tenancy. In my view, a reasonable step would be to immediately begin advertising the rental unit as soon as the Tenants provided their notice to vacate. Instead, the Landlord did not advertise the rental unit until December 15, 2023, finding a new Tenant for January 15, 2024. Had the Landlord began advertising earlier, the Landlord may very well have secured a new tenant for January 1, 2024. As I find the Landlord did not prove they did whatever was reasonable, I dismiss the Landlord's claim for half a month's rent for January 2024, without leave to reapply.

For these reasons, I find the Landlord has established a monetary claim of \$3300.

Tenants' application

Rent reimbursement of \$13,200

In this case, the Tenants are claiming for a full rent reimbursement of the rent paid during the tenancy claiming a loss of quiet enjoyment, this despite the Tenants confirming that they had full use of the entire rental unit for this period of time.

Tenancy Policy Guideline provides that damage or loss may include loss of access to any part of the residential property or loss of quiet enjoyment. Further this includes situations where the landlord has directly caused the interference or unreasonable disturbance, but failed to act.

I find in this case the Tenants failed to comply with the Act by doing whatever is reasonable to minimize their loss. The Tenants did not bring the mice issue to the RTB to seek remedy for the Landlord to comply with their obligations under the Act before taking matters into their own hands by breaching their fixed-term tenancy agreement.

The Tenants said they noticed the mouse issue in August and the Landlord failed to act by not having pest control come to the rental unit until October 2023. I find the evidence shows the Landlord did begin dealing with the issue in August, 2023, whether the problem was resolved or not. The Landlord did provide traps and suggestions to remedy

the situation according to the evidence. I find the Landlord was somewhat handicapped by having to go through the Strata to involve a pest control company.

I acknowledge that the continuing strong presence of mice in the rental unit is unsanitary and distressing to the Tenants and their family. I also find the Landlord could have done more, when reviewing the Tenant's photographs, which show a gap in the door sweep with mouse feces right in front. It was not on the Tenants to volunteer to replace the door sweep. For this reason, I find the tenancy was devalued. However, I find the Tenants' claim for a full reimbursement is extreme and unreasonable. I find a reasonable amount to award the Tenants is 10% of the monthly rent, for four months, for a total of \$1320, for a devaluation of the tenancy. The Tenants are granted a monetary award in this amount.

New bedding

I dismiss the Tenants' claim of \$247.24. The Tenants failed to show why a hot machine wash would not be adequate, the age of the replaced bedding, or that the Landlord caused a loss by a breach of the Act.

Glass jars

I dismiss the Tenants' claim for \$87.96, without leave to reapply. It was the Tenants' choice to buy jars and presumably the Tenants still have full use of the jars, resulting in insufficient evidence of a loss.

Photo development for evidence and registered mail costs (Items 4, 5 and 8)

The Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. These claims are dismissed, without leave to reapply.

Doubling of the security deposit

The Tenant said that they provided the Landlord with their written forwarding address on December 18, 2023, by registered mail. The Landlord said they were out of town and received the forwarding address on December 28, 2023. The Landlord said they repaid the security deposit to the Tenants by e-transfer. The Tenant KD confirmed they received the security deposit on January 4, 2024.

Under the Act, the Landlord must repay the security deposit or file for dispute resolution against the security deposit within 15 days of receiving the written forwarding address or the end of the tenancy, whichever date is latest. The latest of the two dates in this case is the date the forwarding address was received.

Under the Act, a document served by mail is deemed served 5 days after it was mailed, absent evidence to the contrary. The Tenants filed the tracking history of the registered mail, proving the registered mail was sent on December 18, 2023, a notice card was left for the recipient on December 20, 2023, and that the mail was collected on December 22, 2023, less than 5 days after it was mailed. For this reason, I find the Landlord received the written forwarding address on December 22, 2023, and had 15 days from that date to return the security deposit, or January 6, 2024. As the Tenant confirmed they received the e-transfer on January 4, 2024, I find the Landlord complied with the Act and the Tenants are not entitled to doubling of the security deposit. I dismiss the Tenants' claim of \$1650, without leave to reapply.

From the date the Tenants paid the security deposit to the Landlord on July 30, 2023, until the date it was returned on January 4, 2024, the security deposit accumulated interest of \$14.15. For this reason, I grant the Tenants a monetary award of \$14.15.

Moving

As the Tenants chose to vacate the rental unit and break their fixed-term tenancy agreement, I find the Tenants have provided no basis for holding a Landlord responsible for their moving costs. The Act does not provide for reimbursement for a Tenants' choice in facilitating a move. Apart from that, I find the Tenants' claim to hold the Landlord responsible for costs to move to another province unreasonable. I dismiss the Tenants' claim for \$2,992.31 for moving costs, without leave to reapply.

Estimate for time taken out of the Tenant's day

Even though the Tenant explained that the claim was for their time, stress, and headaches, I was unclear to what basis under the Act this estimated claim was made. I find the Tenants submitted insufficient evidence to support this claim and it is dismissed, without leave to reapply.

Filing fees for either party

I decline to award either party recovery of their filing fee, as both parties were partially successful with their application. I find this results in an offsetting of the competing requests for recovery of the filing fee.

Both applications

The Landlord has been granted a monetary award of \$3300, for loss of rent for one month.

The Tenants have been granted a monetary award of \$1334.15 for devaluation of the tenancy of \$1320 and accumulated interest on the security deposit of \$14.15.

I deduct the Tenants' monetary award of \$1334.15 from the Landlord's monetary award of \$3300, leaving the Landlord with a total monetary award of \$1965.85.

I grant the Landlord a monetary order for \$1965.85, pursuant to sections 62(2) and 67 of the Act.

Should the Tenants fail to pay the Landlord this amount without delay, the order may be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court if it becomes necessary. The Tenants are advised that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord is granted a monetary award of \$3300 and the Tenants are granted a monetary award of \$1334.15 for the reasons given above. These two amounts were offset, leaving a total monetary award being granted to the Landlord in the amount of \$1965.85.

The Landlord is granted a monetary order in the amount of \$1965.85.

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 15, 2024