



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with two applications; one each by the landlord and the tenants.

By application of July 21, 2008, the landlord seeks a Monetary Order for unpaid rent/loss of rent, unpaid utilities, damages and the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance.

By application of August 12, 2008, the tenants seek a Monetary Order for damage or loss and recovery of the filing fee for this proceeding.

These parties participated in a hearing on the same tenancy conducted on July 3 and July 31, 2008 on the tenants' application under file no. 718815. At the first session, the landlord requested an adjournment to prepare a cross application. While that motion was disallowed by the Dispute Resolution Officer, when the hearing was adjourned to allow more time for the tenants application, the DRO gave the landlord permission to make application.

When the hearing reconvened, however, the landlord's application had been filed too late to be dealt with in the same hearing. Therefore, the DRO concluded the hearing on the tenants' application. In the result, the tenants were awarded a Monetary Order for \$2,709.41.

In the former hearing, the DRO found that only one of the tenants was a signatory to the rental agreement and amended to the style of cause to name only that tenant, although the others are referred to as co-tenants in the decision. In the present applications, both parties have named all three tenants who were represented by one tenant who did not appear at the previous hearing and the landlord submitted a rental agreement with all three signatures. Therefore, the present hearing and decision identifies all three as tenants.

This was a fixed term tenancy from July 1, 2005 to June 30, 2010. The tenants moved on May 30, 2008.

Issue(s) to be Decided

On examining the tenants' application, I find that majority of the claims were already dealt with in the previous hearing under file no. 718815. The one exception was the claim by the tenants that the landlord owed them between \$2,200 and \$2,400 for hay purchased to feed the landlord's cattle while he was away traveling.

The tenant gave evidence that he had further claims for veterinary bills but was proceeding with those through small claims court. As the provision of hay is not part of the rental agreement, I find that the tenants' claim for reimbursement for hay purchase is a matter that would also be more appropriately addressed through the court.

As the remainder of the tenants' claims are *res judicata* (previously adjudicated), the tenants' application is dismissed without leave to reapply. Therefore, the remainder of this decision addresses only the landlord's application.

Background and Evidence

The parties concur that, on May 27, 2008, the landlord served the tenants with notice of some sort. The tenants state that it was a notice to end tenancy. The landlord states that it was merely a warning. In the absence of a copy of the document, I make no determination beyond observing that the tenants took it as notice and moved.

The tenant gave evidence that, during the move, the landlord assaulted one of the male tenants by grabbing him by the throat and the female tenant by striking her in the chest with his foot. He stated that charges have been laid and following the incident, an RCMP officer advised the female tenant not to return to the property.

The hearing was challenged by the fact that the parties had some undocumented arrangement which co-mingled the rental agreement with duties the tenants had undertaken to tend to the landlord's cattle. It was further challenged by the fact that the parties gave contradictory evidence on almost all points and constantly interrupted each other.

Analysis

The landlord claims, and I find as follows:

1. Rent arrears for March 2008 of \$150, April rent of \$650, May rent of \$650, and loss of rent for June of \$650. While the tenants make claim that this rent owed was set off against what the landlord owed them for hay, as noted, I have declined jurisdiction on that matter. Therefore, I find that the landlord is entitled to recover the unpaid rent. However, I accept the evidence of the tenant that two of the tenants were assaulted by the landlord after receiving his notice and that a police officer directed the female not to return to the property. I find that by the

assault, the landlord made it untenable for the tenants remain in the rental unit in June and I dismiss the landlord's claim for loss of rent for June.

2. Unpaid hydro bills. The landlord submits paid invoices for a claimed previous billings totaling \$383.99 and prorated bills to May 31, 2008 of \$179.64 totaling \$563.63. The tenant gave no evidence of having paid these bills and I find that the landlords claim is allowed.
3. Unpaid telephone bills. The landlord has provided receipts in support of this claim for telephone bills totaling \$38.38 and the tenant has provided no evidence that they were paid. This claim is allowed.
4. Carpet cleaning and washing of walls. The landlord claims, supported by receipts, for \$171.68 for professional cleaning plus \$3.57 for deodorizer. This claim is allowed. The landlord's claim for 10 hours for washing of walls at \$20 per hour is dismissed on the grounds that the female tenant's written evidence stated she would have done that work had she felt safe to return to the rental unit.
5. Repairs to the rental unit. While the landlord acknowledges that some painting and touch up would be expected after a three year tenancy and he makes no claim for that, he does claim \$400 for repairs to holes in doors and walls. The landlord claims for 20 hours labour at \$20.00 per hour. I find that the claim is somewhat high for the work described and reduce this award to \$200.00.
6. Garbage clean up and dumping fees. The landlord claims dumping fees of \$45.30 for clean up of garbage left by the tenants in addition to \$60.00 for employment of his truck for one hour. I allow the dumping fee, but reduce the claim for the landlord and the truck to \$20.00 for a total of \$65.30.

7. An order that the tenants instruct the ADSL provider to remove their equipment from the rental unit as the supplier cannot remove it without the tenants' instruction. The tenant agreed to tend to the task forthwith and I hereby so order.
8. An order that the tenants return the house and mail box keys to the landlord. I so order. However, the landlord's claim for \$21.50 for a new lock is dismissed as I accept the evidence of the tenant he had to replace the first lock when it fell off and ceased to function, and, as was the norm with the tenancy, he made the repair. In addition, with the tenancy having ended, the landlord may be compelled to replace the locks by section 25 of the *Act* in any event.
9. Security deposit. As the security deposit was awarded to the tenants in the previously noted hearing, it cannot be addressed again in the present hearing.
10. Filing fee. Given that the landlord's application has succeeded in large, I find that he is entitled to recover the \$50.00 filing fee for this proceeding from the tenants.

The resultant Monetary Order is calculated as follows:

March rent shortfall	\$ 150.00
April rent	650.00
May rent	650.00
Hydro bills	563.63
Telephone bills	38.38
Carpet cleaning	182.25
Repairs to doors and walls	200.00
Garbage clean up and dumping fees	65.30
Filing fee	50.00
TOTAL	\$2,549.56

Conclusion

Thus, the landlord's copy of this decision is accompanied by a Monetary Order for \$2,549.56, enforceable through the Provincial Court of British Columbia, for service on the tenants.

September 2, 2008
