



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNSD, MNDC, & FF

Introduction

This hearing dealt with cross applications by the parties seeking monetary claims against each other due to loss or damage by breach of the tenancy agreement or *Act*. Both parties appeared for the hearing, presented affirmed evidence and were provided the opportunity to respond to the evidence of the other party.

Issues to be Determined

Has either party established a monetary claim related to damage or loss due to breach of the tenancy agreement or *Act*?

Background and Evidence

The written tenancy agreement, signed on September 30, 2008, establishes that this tenancy began on September 30, 2008 as a month to month tenancy for the monthly rent of \$900.00 and a security deposit of \$450.00. The tenancy agreement also allowed the rental unit to be smoked in and for the tenant to have pets.

There was no move-in condition inspection in writing to establish the condition of the rental unit and no move-out condition inspection. Also, there was apparently some furniture in the rental unit at the time the tenant took possession but no description of what articles of furniture were in the rental unit or the condition of these articles. During the hearing the landlord submitted that the furniture, consisting of a couch, love seat and mattress were all approximately 5 years old and the linoleum was over 10 years old.

Multiple issues arose in this tenancy when one of the furnaces in the rental unit stopped working on two occasions. Each party alleges that the other was negligent in failing to properly address this issue. The landlord alleged that the tenant was aware of the failure of the one furnace for approximately 5 or 6 days before contacting the landlord. As a result the landlord argued that the septic system was not heated and froze. This resulted in the tenant having no bathroom for several days as the landlord attempted to unfreeze the system.

The tenant provided disjointed and inconsistent evidence with respect to when the furnace first went out and when the landlord was contacted. The tenant gave incorrect dates and could not provide reasonable explanations to the inconsistency in the evidence provided. For example, the tenant stated that people came to take her to the

nearest washroom but could not explain why she was not taken to the landlord's place of employment near the rental unit. The tenant's only defence was that they attempted to call the landlord repeatedly without receiving a response.

During the time that the one furnace was disabled the tenant apparently used the secondary furnace. This caused too much heat directly on the tin roof and caused leaking in the rental unit. The tenant argued that this leaking caused their television to be damaged.

The landlord stated that once aware that the furnace was not working he had a technician sent to the rental unit to repair it. The landlord could not explain why the technician left the necessary part with the tenant to install. Regardless, the issue was not solved and the furnace failed a second time. The landlord stated that the tenant again failed to notify them of the problem until approximately 14 hours later. The landlord did not provide any evidence showing the regular maintenance of the furnaces.

As a result of the loss of bathroom facilities the tenant decided not to pay the full rent owed for March 2008. The landlord issued a 10 day Notice to End Tenancy and the tenant vacated the rental unit effective April 4, 2009.

The landlord stated that the tenant failed to clean the rental unit, damaged the furniture that was part of the rental unit, damaged some flooring in the rental, failed to pay the all the rent for March 2009, are responsible for the loss of rent for April 2009 and are responsible for all the costs associated with the freezing of the septic system.

Analysis

I do not accept the testimony presented by the tenants. I find that the tenant was negligent in failing to inform the landlord that the furnace was not operating in a timely manner and as a result the sewage lines in the trailer froze. The tenant's evidence was inconsistent and several times the tenant had to correct dates to adjust the testimony so it would be more favourable to the tenant's position.

I also find that the tenant was responsible for any loss suffered due to the lack of heat and loss of bathroom facilities. I find that the tenant's loss of heat, bathroom facilities and the damage to the television were due to their negligence and I dismiss the tenant's application without leave to re-apply.

I find that the landlord has established the following monetary claim:

Loss of rent for March 2009	\$300.00
Loss of rental revenue for April 2009	\$900.00
Cost to clean rental unit (I find that the landlord is sufficiently compensated for the cleaning of the rental unit by this sum and I do not accept the additional claim for cleaning supplies)	\$540.00
Service Glass – replacement/repair of window	\$187.69

Cost to steam septic system (repair)	\$409.50
Plumbing supplies to repair septic system	\$187.69
Carpet cleaning	\$77.00
Total	\$2,601.88

I have only accepted costs reasonably associated with the tenant's negligence but not costs related to expenses that the landlord would reasonably incur if repairs or maintenance was required outside of the actions of the tenant. For example, I do not accept the landlord's claim for the repair costs to the furnace as the evidence establishes that the furnace required servicing and that is the landlord's obligation. I also only accept a portion of the landlord's claim for bobcat services because only the removal of the tenant's recreational vehicle was a cost that would not be normally and reasonably expected. The receipt also indicates that the service was to plough the drive way and parking area, an expense which I find is the landlord's obligation. I also deny the landlord's claim for costs associated with repairing the toilet as there was insufficient evidence to establish that the tenant damaged the toilet.

I also reject the landlord's claim for costs to replace their furniture and the flooring in the rental unit. I reject the claim for furniture on the basis that the landlord failed to provide any documentation that the furniture was part of the tenancy agreement or that the tenant had any obligation to reasonably maintain that furniture. I also find that even if the tenant was responsible for the furniture, the furniture had no further value due to its age and condition. I also find that the flooring was depreciated to the point where it had no further value and was at an age where it would have to be replaced by the landlord.

I accept the landlord's claim based on their oral testimony, photographic evidence and the copies of the receipts provided. I also find that the landlord is entitled to recover the \$50.00 filing paid for this application from the tenants. I find that the landlord has established a total monetary claim of **\$2,651.88**. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$451.72 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$2,200.16**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed without leave to re-apply as it is without merit. I have accepted the landlord's application and have determined that the tenants are liable for the damages experienced by the landlord for the sum of \$2,199.63.

Dated May 29, 2009.

Dispute Resolution Officer