



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MNR, MND, MNDC, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to loss of rent, damage to the rental unit and to retain the tenants' security deposit plus interest in partial satisfaction of this claim. Both parties were provided the opportunity to be heard and to respond to the evidence of the other party.

Issues to be Determined

Has the landlord established a monetary claim related to loss of rent and rental revenue and due to damage caused to the rental unit by the tenants? Is the landlord entitled to retain the tenants' security deposit plus interest in partial satisfaction of this claim?

Background and Evidence

This tenancy began effective July 1, 2008 as a fixed term lease ending on July 31, 2009. The monthly rent was \$1,350.00 per month and a security deposit of \$675.00 was paid on July 1, 2008.

There is significant conflict between the parties about all aspects of this tenancy and the subsequent damages claimed by the landlord. All the evidence presented by each party was disputed and contradicted by the other party. It is clear from the evidence that neither party followed or applied the requirements of the *Act* when entering into and carrying out this tenancy.

The tenants entered into this contract without viewing the rental unit. I accept their evidence that they did not receive photographs of the rental unit until after they had signed the tenancy agreement and had provided the landlord with the first month's rent and security deposit. I also accept that the tenants were highly disappointed with the actual condition of the rental unit when they occupied it in August 2008. Despite their disappointment with the rental unit they did not seek to cancel the agreement with the landlord and occupied the rental unit until January 31, 2009.

The landlord failed to conduct a move in condition inspection in writing with the tenants once they occupied the rental unit, but did a walk through when they arrived on approximately July 27, 2008.

The landlord did not complete a move in and move out condition inspection in writing until after January 31, 2009 and claimed that it could not be completed with the tenants as they were being aggressive and uncooperative.

Although the landlord initially claimed damages for the sum of approximately \$16,000.00 in the particulars of her application the actual sum being claimed by the landlord is for the sum of \$5,144.85 comprised of the following:

Loss of rent and rental revenue from February to July 31, 2009	\$3,150.00
Re-painting of the rental unit	\$819.00
Repair and replacement of gravel in drive way	\$609.00
Repair of damaged lawn	\$96.00
Repair of washing machine	\$258.51
Outstanding Hydro costs due repairs to rental unit	\$68.24
Cost of advertising rental unit	\$44.10
Recovery of filling fee paid for application	\$100.00
Total	\$5,144.85

The landlord submitted that she lost the rent for February and March 2009 for the sum of \$2,700.00 while she repaired and cleaned the rental unit and subsequently lost \$150.00 per month to the end of the fixed term lease as she was only able to rent the unit for \$1,200.00 per month effective April 1, 2009. The landlord stated that the tenants provided no notice to vacate and breached the fixed term lease. The landlord also seeks reimbursement for hydro costs for the month of February and March while she completed repairs. I note that all of the receipts submitted by the landlord are for the first week or two of February 2009 and there is no evidence before me to indicate that work was being completed beyond the first few weeks of February 2009.

The landlord stated that the rental unit was last painted in approximately January 2008. The landlord argued that the tenants failed to clean mildew on the walls and caused minor damage requiring that the rental unit be re-painted.

I inquired why the landlord was no longer requesting reimbursement for a fungus inspection which she originally claimed in her application. The landlord stated that the inspection was never carried out. The landlord provided no evidence, other than photographs, to establish how the tenants were responsible for the mildew growth on the walls in the rental unit.

The landlord stated that the gravel drive way as part of the rental unit was significantly damaged and stained after this tenancy. She stated that the gravel was stained and the gravel had significant debris in it such as nails. The landlord submitted that the cost to replace the gravel so far is \$609.00 and that this process has continued into April 2009.

The landlord stated that she had to complete lawn repairs for the sum of \$94.00 related to damage caused by the tenants' vehicles and by a shed placed on the property by the tenants without permission. The landlord indicated that this consisted of reseeding the lawn in some areas.

The landlord stated that after the tenancy ended the washing machine no longer worked and on inspection it required a new motor. The landlord stated that the washing machine was purchased in January 2007 and speculated that the tenants may have overloaded the machine or used it as part of their commercial cleaning operation. The landlord provided no other evidence, other than her speculations, as to why the motor of the washing machine was no longer functional.

The tenants submitted that the landlord has failed to act properly as required under the *Act* such as failing to conduct the move in and move out condition inspections in writing. They also stated that they felt that the landlord misrepresented the rental unit and therefore voided the tenancy agreement. The tenants argued that the rental unit has a significant moisture problem due to improper work done to the rental unit and as a result they were concerned for their health and vacated the rental unit. The tenants acknowledged that they did not give the landlord notice in writing or one month's notice as required by the *Act*.

The tenants argued that all the mildew in the rental unit was due to the moisture problem and stated that when they moved into the rental unit the walls were dirty. The tenants deny causing any damage and stated that they left the rental unit in better shape than when they first occupied the rental unit. The tenants stated that their vehicles did not leak oil and are perplexed by the landlord's claim for repairing the drive way gravel. The tenants stated that they properly used the washing machine and that it was operational the last time they used it. They denied overloading the washing machine or using it for commercial purposes. The tenants denied causing any damage to the lawn and pointed out a photograph in their evidence showing that the landlord had parked on the lawn.

The tenants also stated that they believed that a new tenant had occupied the rental unit in March 2009 and rejected the landlord's claim for loss of rental income and hydro costs. The tenants also pointed out that the landlord's receipt for painting the rental unit had the wrong address.

Analysis

As indicated above, neither party has conducted themselves in a reliable manner. Both the landlord and the tenants failed to outline their concerns in writing or to document the condition of the rental unit in writing. However, the landlord has the burden of proving her claims and due to some significant inconsistencies I find that I can place very little weight on the oral evidence of the landlord. I am very concerned about the absence of the fungus report which the landlord initially claimed as part of this application. The landlord provided in her particulars for this dispute a specific amount for the cost of this report; however, at the time of the hearing it no longer was being claimed. I find that the absence of this report is significant given the position of the tenants that the rental unit had a moisture problem. I am also concerned by the wrong address placed on the receipt related to the alleged painting of the rental unit. Within the evidence packages provided the parties I have two different receipts for allegedly painting the rental unit. One has the correct address but does not provide any totals and the other receipt has the wrong address but provides the amount being claimed by the landlord.

As a result of these two inconsistencies I reject the landlord's claim for painting the rental unit. On the balance of probabilities I find that the landlord had not proven that the tenants are responsible for the mildew requiring that the rental unit be painted.

I also reject the landlord's claim for costs related to replacing or cleaning the gravel of the drive way of the rental unit. I find that this is a permanent fixture of the rental unit and it is the landlord's obligation to maintain and repair. Even if I had evidence to show that it was the tenants' vehicle which leaked sufficient oil to require replacement of the gravel, I would not be satisfied that this was a cost for which the tenants would be responsible. I would consider this to be normal wear and tear of a drive way.

I reject the landlord's claim for costs related to reseeding the lawn of the rental unit. I find that the landlord, as demonstrated by the photographs, has parked on the lawn and that this was minor and normal wear and tear even if all the damage could be attributed only the tenants' installation of the shed.

I reject the landlord's claim for the cost to repair the washing machine. Although the landlord has provided speculative evidence as to why the washing machine's engine may have burnt out, I have no concrete evidence to find that the tenants were responsible. I find that it is as likely that the machine failed due to being two years old.

I also reject the landlord's claim for loss of rent and rental income. I do not accept the landlord's claim that repairs and cleaning of the rental unit took until April 2009. The landlord's evidence clearly demonstrates that all work was completed by the second week of February 2009. The landlord has also failed to provide any evidence as to when the rental unit was actually re-rented or what monthly rent it was rented at. The landlord had also failed to provide any evidence to support why she could not re-rent the rental unit at the amount previously as a result of the tenants.

However, I do accept that the tenants breached the contract and failed to provide one month's notice in writing. As a result I accept the landlord's claim for the loss of one month's rent of \$1,350.00 and the cost to advertise for the sum of \$44.10. I also find that the landlord may recover half of the \$100.00 filling fee paid for this application from the tenants.

I find that the landlord has established a total monetary claim of \$1,444.10. Although the landlord extinguished any right to retain the tenants' security deposit plus interest by failing to conduct move in and move out condition inspections, section 72 of the *Act* allows me to offset any monetary claim established by the landlord by the tenants' security deposit plus interest. Therefore, I Order that the landlord may retain the tenants' security deposit plus interest of \$680.09 and I grant the landlord a monetary Order for the remaining sum owed of **\$764.01**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord has been partially successful in establishing a monetary claim due to loss of rent due to the tenants' failure to provide proper notice to vacate as required by the *Act*.

Dated May 04, 2009.

Dispute Resolution Officer