



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – MNDC, MNSD, FF

For the landlord – MND, MNSD, MNDC, FF

Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The tenants also seek the return of their security deposit and to recover the filing fee. The landlord seeks a Monetary Order for damage to the rental unit and for money owed or compensation for damage or loss under the *(Act)*, Regulation or tenancy agreement. The landlord also seeks to keep the security deposit and recover the filing fee.

Both Parties served the other Party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for double their monthly rent due to the landlord not complying with the reasons given on the Two Month Notice to End tenancy?
- Are the tenants entitled to a Monetary Order for compensation for a loss of a facility, for stress and for moving costs?



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- Are the tenants entitled to the return of their security deposit?
- Is the landlord entitled to a Monetary Order for damages to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for lost revenue?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this was a month to month tenancy. Rent was \$900.00 per month due on the first of each month. They also agree that the tenants paid a security deposit of \$450.00 and a pet damage deposit of \$450.00 of which \$200.00 was paid on June 15, 2009 and \$700.00 was paid on June 20, 2009. The tenants state the verbal tenancy agreement started from June 25, 2009 when they moved into the unit. The landlord states the agreement did not start until July 01, 2009, however he did give the tenants permission to move their belongings into the suite on June 25, 2009.

Tenant's application

The tenants testify that the landlord refused to give them a written tenancy agreement and did not do either a move in or move out condition inspection at the start and end of their tenancy. The tenant's testify that they moved from the rental unit after being served a Two Month Notice to End Tenancy on July 25, 2009 with a vacate date of September 25, 2009. The reason given on this Notice is that the rental unit will be occupied by the landlord, or the landlords spouse or a close family member of the landlord or the landlords' spouse. The tenants left the rental unit on September 30, 2009. The tenants claim that the landlord told them he needed the suite vacant as his girlfriends son was moving into the suite. The tenants testify that the suite has not been occupied since they moved out. The tenants are claiming an amount equivalent to double their monthly rent as the suite has not been used for its intended purpose as declared on the Notice to End Tenancy.

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The tenants claim that on the day they moved out they attempted to get the landlord to do a move out walkthrough of the suite as they had cleaned the carpets and left the suite in a clean condition (copy of carpet cleaning receipt in evidence). The female tenant testifies that the landlord refused to do this walkthrough with them and attacked her with a broom. The RCMP were called and an Officer and the landlord walked through the suite and stated that it was clean. The tenants claim they tried to return the keys to the landlord before he attacked her with the broom. They state they have made other attempts to return the keys but the landlord will not answer the phone. The tenant's testify that they gave the landlord their forwarding address in writing on October 22, 2009 and have provided a copy of this letter in evidence.

The tenants claim that during their tenancy the gas was turned off for four days. They contacted the gas company and were told it could have been turned back on but the landlord did not want to pay a fee. The tenants are claiming \$100.00 for this loss of service.

The tenants seek \$300.00 for having to move again. They have not provided receipts for their moving expenses in their evidence. The tenants also seek \$900.00 for the stress caused during their tenancy by the landlords' actions.

Landlords' application

The landlord testifies that he did want to rent the suite to a family member but due to the tenants actions in reporting him to the city for having an illegal suite this caused anxiety for the landlord. The landlord claims the city told him to remove the cooking facilities in the suite while they found the permits for the suite. The landlord claims he has taken the suite back for his own use but at this time it remains empty.

The landlord claims the tenants did not return the keys to the unit and he has had to change the lock at a cost of \$80.00 (no receipt provided). The landlord claims that he could not re-rent the suite after the tenants moved out as he has had to wait for the approved permits from the city. The landlord is claiming five months lost revenue at \$868.00 a month to a sum of \$4,340.00.



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The landlord claims the tenants had a pet dog that damaged the carpets in the suite. The carpet had to be cleaned professionally again after the tenant had cleaned it to get rid of the dog hair. The landlord has provided a receipt for this cleaning. The landlord also claims that the tenants used bleach on the carpet which did not show through until 24 hours after he looked at the suite with the officer from the RCMP. The landlord is claiming \$105.00 for the carpet cleaning and \$300.00 in damages for the bleach on the carpet.

The landlord agrees that the gas was cut off for four days as he had overlooked a gas bill and the gas company cut him off by mistake.

The landlord claims that the tenants moved into the rental unit on June 25, 2009 when their tenancy did not start until July 01, 2009. The landlord claims he gave the tenants the keys on June 25, 2009 so they could move some of their belongings into the rental unit. The landlord claims \$175.00 in unpaid rent for this period of five days.

The tenants dispute this. The tenants claim that the landlord gave them the keys and said they could move into the rental unit a few days early. They dispute the landlords testimony that this was only for them to move their belonging into the unit

Both Parties discussed other issues that were not relevant to this hearing or either Party's application.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; I will deal with the tenant's application first; Section 51 of the *Act* states: if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the

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tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Consequently, I find the landlord has not used the rental unit for the stated purpose given on the Two Month Notice to End Tenancy. I further find that during the landlords' evidence it was apparent that he is waiting for the city to find any permits associated with the rental unit in order to continue to re-rent the unit to other tenants. I therefore find the tenants are entitled to receive a monetary award equivalent to double their monthly rent to a sum of **\$1,800.00**.

With regard to the tenants claim for the loss of gas service to their unit for four days; section 27(1) of the *Act* states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation. I find that the landlord did not take steps to contact the Gas Company to ensure the gas service was reinstated until four days later. This meant that the tenants were without hot water to cook or clean during this time. Consequently I find the tenants are entitled to a monetary award of **\$100.00** in compensation for this loss of service.

With regard to the tenants claim for the return of their security and pet damage deposits; Sections 23(4), 35(3) and 35(5) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out of the unit I find the landlord contravened s. 23(4) and 35(3) of the *Act*. Consequently, s. 24(2)(c) 36(2)(c) of the *Act* says that the landlord's right to claim against the security or pet damage deposit is extinguished. I find the tenants are entitled to recover \$450.00 from the security deposit and \$450.00 of the pet damage deposit to a total sum of **\$900.00**.

With regards to the tenants claim for moving expenses I find that as the tenants did not dispute the Two Month Notice to End Tenancy they chose to move from the rental unit and the tenancy ended on that day. Therefore I dismiss their application to recover \$300.00 for their moving expenses. The tenants have also claimed \$900.00 for stress caused during their tenancy. The

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burden of proof is on the tenants to claim the level of stress they endured during the tenancy. In this instance I find the tenants have not provided sufficient evidence to determine the alleged levels of stress they endured and therefore this section of their application is dismissed.

I find as the tenants are partial successful with their claim they are entitled to recover the \$50.00 filing fee paid for this application. A Monetary Order has been issued for the following amount:

Two months' rent in compensation	\$1,800.00
Return of security and pet damage deposits	\$900.00
Filing fee	\$50.00
Total amount due to the tenants	\$2,850.00

In dealing with the landlords' application; a condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if they have left a rental unit unclean at the end of the tenancy. The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. As the landlord did not comply with these sections of the Act his right to keep either the security or pet damage deposits are extinguished as documented above. I further find as the tenant's dispute that they left the rental unit unclean or caused any damage to the carpets, that the landlord has not provided sufficient evidence to support his claim. Consequently the landlords claim for \$105.00 for carpet cleaning and \$300.00 for damage to the carpet is dismissed.

With regards to the landlords claim for compensation for lost revenue for five months; I find the landlord gave the tenants a Two Month Notice to End Tenancy and the tenants moved out in accordance with this notice. As the landlord gave the reason on the Notice that the rental unit



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was for the landlords' use of the property I find the landlord cannot claim against the tenant for five months lost revenue because he cannot re-rent the property. Consequently this section of the landlords claim is dismissed.

With regards to the landlords claim for replacement locks as the tenants did not return the keys to the landlord. I find the tenants did attempt to return the keys at the end of the tenancy, I further find the tenants attempted to return the keys after the tenancy ended however the landlord would not take or return the tenants telephone calls. I also find the landlord has not provided a receipt for the actual cost of replacing the locks. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for \$175.00 in unpaid rent for June, 2009; I find when a landlords evidence is contradicted by the tenants the burden of proof lies with the landlord to prove that he did not agree that the tenants could move into the rental unit early and that this time in June was just for them to move their belongings into. In this instance the agreement was verbal. By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find the verbal arrangement that the tenants could only move their belongings into the rental unit rather than move in early without any other evidence to substantiate this agreement. Consequently in the absence of any corroborating evidence to support the landlords claim for unpaid rent for this period I dismiss his claim for \$175.00.

As the landlord has been unsuccessful with his claim I find he must bear the cost of filing his own application.

Conclusion



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I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,850.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed in its entirety without leave to reapply.

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: March 01, 2010.

Dispute Resolution Officer