



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This was the hearing of applications by the tenant and by the landlords for monetary orders. The tenant sought the return of her security deposit and the landlords requested an order to retain it in partial satisfaction of their monetary claim. The hearing was conducted by conference call. The tenant and the landlords participated in the hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order and if so in what amount?

Are the landlords entitled to a monetary order and if so in what amount?

Background and Evidence

The rental unit is a main floor suite in North Vancouver. The landlords occupy the upstairs portion of the house. The tenancy began on September 15, 2009 for a six month fixed term stated to end on April 1, 2010 and thereafter month to month. Monthly rent was \$1,200.00 payable on the 15th of each month. The tenant was responsible for 30% of the utilities. The tenant paid a \$600.00 Security deposit and a \$300.00 pet deposit at the beginning of the tenancy.

On February 14, 2010 the tenant gave written notice to the landlords that she would move out on March 14, 2010. The tenant moved out on March 13, 2010. She gave the landlord her forwarding address by letter dated March 13, 2010, wherein she also refused to allow the landlord to deduct a utility bill of \$36.24. The landlord requested

that the tenant send payment for the bill and then they would release the tenant's deposit.

The tenant did not pay the utility bill and the landlord did not return the deposit. The tenant filed her application for dispute resolution on May 3, 2010.

The tenant has claimed that the landlords interfered with her right to quiet enjoyment of the rental unit, entered the rental unit without permission and failed to return her security and pet deposits within the time required by the *Residential Tenancy Act*. She claimed that the landlords harassed her. The tenant claimed payment of the sum of \$3,974.91. She claimed for the amount of her security and pet deposits, including double the amount of the deposits. She claimed compensation in the amount of \$1,800.00 calculated at \$300.00 per month for six months and she claimed \$350.00 for furniture cleaning.

The tenant also claimed amounts for photocopying and for the cost to provide photographs.

The tenant said that she was told when she agreed to rent the unit that some repairs were necessary and would be completed before she moved in. She said that a furnace was installed after she moved in. It took two days to install and she said that the installers made a mess and left screws on the floor.

The tenant complained that the landlords entered the rental unit in her absence without notice and without first obtaining her permission. She said the landlord entered without giving written notice on several occasions. She referred to instances when the landlord left voice messages on her home telephone when she was at work and then entered for such non-emergency purposes as removing and replacing a furnace door and after hearing a carbon monoxide detector beeping. She said that the landlord insisted on talking to her at inappropriate times and invaded her privacy to engage her in unwanted conversations.

The tenant complained that there was a problem with the fireplace in the rental unit. She testified that the fireplace chimney backed up and caused noxious odours in the rental unit. The tenant said that the landlord had the chimney cleaned and painted inside but that did not solve the problem. She testified that the landlord wanted to cover the fireplace opening with plastic but that was unacceptable to her because she has a small child. The tenant said that she kept windows open because of the fireplace smell, but the landlord objected to the windows being open.

The tenant said that the landlord repaired a waterline and in the course of the work made a hole in the dry wall in the bathroom that was left open for more than one month. The tenant complained about a bathroom window that did not close properly, a malfunctioning bedroom light and deteriorating shower walls. She said that she placed a shampoo bottle on the shower shelf and it fell, breaking the shelf. The tenant claimed that the shower stall broke because it was deteriorating.

On March 13, 2010, the day she moved out of the rental unit, the tenant sent a letter to the landlord. She said in the letter that she would not allow the landlord to deduct her portion of a gas bill from her security deposit. She requested a copy of the bill and said she would send the landlord a cheque in payment. The tenant set out her forwarding address in the letter. The landlord then wrote requesting payment of the bill in the amount of \$36.24 and requested that the tenant send the payment: "as soon as possible so that we can release your deposit." The tenant did not respond to the letter and did not send payment of the bill. The landlord attempted to contact the tenant, but she did not reply. The landlord sent a letter to the tenant dated April 15, 2010 saying: "Once I receive your payment for the gas bill you will receive your security deposit without any deductions."

After the tenant served her application for dispute resolution the landlord offered to pay the tenant the sum of \$1,875.81 in settlement of her claim. The tenant did not respond and did not accept the offer.

The landlords filed their own Application for Dispute Resolution on July 30, 2010. They claimed a monetary order in the amount of \$2,041.24. In the application the landlords said they were claiming for a damaged shower unit, the premature termination of the lease and an unpaid utility bill.

The landlords denied the tenant's claims that she had been harassed and disputed her claims about problems and inadequacies in the rental unit. The landlord testified that the tenant was told before she agreed to rent the unit that the landlord would have to replace the furnace and would need access to the rental unit in order to do so; this was discussed with the tenant before she signed the tenancy agreement. The landlord said that he took extraordinary measures to address the tenant's complaints about the fireplace. The landlord suggested blocking the fireplace because the tenant was not using it. She refused on aesthetic grounds. The landlord had the chimney cleaned several times, they placed high temperature cement to seal the damper, they painted the firebox and had the chimney re-pointed and painted. The landlord blocked the top of the chimney to reduce air flow down the chimney.

The landlord said that the acrylic shower wall in the bathroom of the rental unit was not deteriorated, but one of the built-in shelves appeared to have been broken when it was hit or something was dropped on it.

Analysis and conclusion

Tenant's claim:

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the

end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

I am satisfied that the tenant provided the landlord with her written forwarding address with her letter of March 13, 2010. The security and pet deposit was not refunded within 15 days as required by section 38 and the doubling provision of section 38(6) therefore applies. I grant the tenant's application for this part of her claim and I award her the sum of \$1,800.00. No interest has accrued on the original deposit amounts.

The tenant claimed \$350.00 for cleaning furniture; she did not provide evidence of an expenditure for cleaning furniture and I deny this claim.

The tenant claimed compensation of \$1,800.00 for what she claimed was loss of quiet enjoyment and harassment. I do not find that the evidence supports a finding that the tenant was harassed. I find that the landlord was attempting to communicate with the tenant in genuine efforts to resolve her complaints about the rental unit. I find that the landlord did not enter the rental unit for inappropriate reasons. There were occasions when the landlord did not give written notice and there were occasions when the landlord was likely justified in entering on an emergency basis, when there was a smell of gas and when the carbon monoxide.

I do not find that the tenant is entitled to any compensation for the supposed chimney problems. The landlord took steps to deal with the tenant's concerns and would have blocked the fireplace with plywood but the tenant refused this offer. Having heard the evidence of the parties, I find the tenant's complaints and concerns about the fireplace to be overstated and exaggerated.

The tenant was told about the furnace replacement before she agreed to the tenancy; I find that she agreed to accept the inconvenience of the furnace replacement when she agreed to rent the unit. The tenant lost some quiet enjoyment due to the water leak and water line replacement. I award the sum of \$100.00 for loss of quiet enjoyment on this account. I have considered the tenant's evidence and the monetary amounts claimed. The amounts I have allowed as set out above form the entire award to the tenant. The

tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,950.00.

Landlords' claim:

The landlord claimed an amount for premature termination of the tenancy agreement. I do not allow this amount. The tenant gave a month's notice and the landlords accepted the end of the tenancy on March 14th. The tenancy agreement itself is ambiguous about the term. The tenancy began on September 15, 2009. The agreement stated that it was for a term of six months; the six month term ended on March 15, 2010, but the agreement said the end of the term would be April 1, 2010.

I allow the landlords' claim for an unpaid utility bill in the amount of \$36.24.

I accept the landlords' evidence that the acrylic shower enclosure was not deteriorated. The tenant acknowledged that the enclosure broke when she dropped a bottle on it. I find that the tenant is responsible for the replacement of the shower surround. I was not provided with an amount for the cost to install the shower surround. The landlord submitted an invoice for the cost of the surround in the amount of \$766.08 and I allow the landlord's claim for this amount only. The total award to the landlord is the sum of \$802.32. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$852.32. Pursuant to section 72 of the *Residential Tenancy Act* I set off the award to the landlord against the amount awarded to the tenant. This leaves a net amount due to the tenant of \$1,097.68 and I grant the tenant a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.