

DECISION

Dispute Codes CNC, CNR, ERP, LRE, MNDC, OLC, RR, OPC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

There were numerous reasons put on both applications for dispute resolution however by the time of the hearing the tenants had vacated the rental unit, and therefore both applications are now strictly monetary claims.

The tenant's application is a request for a monetary order for \$734.00.

The landlord's application is a request for a monetary order for \$5,000.00

Tenant's application

Background and Evidence

The tenants testified that:

- They are requesting the return of their full security deposit of \$435.00.
- They are also requesting an order that the landlord pay moving costs in the amount of \$299.00, because they believe that the reasons given on the landlords Notice to End Tenancy were not valid reasons for ending the tenancy.
- They had originally disputed the Notice to End Tenancy; however they subsequently decided to vacate the rental unit and therefore have withdrawn that portion of their claim.

Analysis

The tenants have requested the return of their security deposit of \$435.00; however the landlord has filed a counterclaim against the tenants in which she requests an order allowing her to keep the security deposit towards her claim, and therefore I must deal with that issue first, as the outcome of the landlords claim could possibly affect the claim for return of the security deposit.

I deny that tenants request for moving costs, as it was their choice to move rather than continue with their dispute of the Notice to End Tenancy.

Landlords application

I reviewed this landlord's application and determined that a number of the items claimed do not flow from the residential tenancy and therefore the Residential Tenancy Act has no jurisdiction over a large portion of the claim.

It is my finding that I have no jurisdiction over the following portions of the claim:

- Roof repair
- Transmission
- Unnecessary gasket
- Marine light
- Installation of Marine light
- Change from cement project
- Broken tail light on truck
- New locks and labour on office cottage
- Mailing costs for arbitration papers
- Mailing costs for evidence
- Fuel costs
- Truck rental

I deal with the remainder of the claim below:

Background and Evidence

The landlord testified that:

- The tenants were given a discount in the rent of approximately \$200.00 per month and in exchange were supposed to provide approximately 15 hours per

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month labour. The tenants failed to provide the labour and therefore she wants to be reimbursed $\$200.00 \times 4 \text{ months} = \800.00

- The tenants were evicted from the rental unit for cause and she has not been able to re-rent one of the cabins and therefore is requesting \$595.00 in lost rental revenue.
- The tenants broke a medicine cabinet during the tenancy and it will have to be replaced or repaired and an estimated cost of \$50.00 to \$200.00 plus tax.
- The tenants also left one of the cabins in need of substantial cleaning at an estimated cost of \$100.00.
- The tenants left a composting toilet in extremely bad condition and the bottom of the unit was filled with waste fluids. It took two people 4 hours, for a total of 8 hours, to clean this toilet and they are therefore requesting \$20.00 per hour = \$160.00.
- She is not sure if the tenants returned all the keys and therefore she is requesting \$210.00 to replace all the locks on the "Sauna Cottage".
- The tenants also left some damages in the rental unit that will need to be repaired at a cost of \$100.00.
- She is also requesting the cost of advertising in the Times Colonist, should it become necessary, at a cost of \$54.00.
- She also believes that the tenant's used an excessive amount of power during the tenancy, having used a total of \$661.15 in a 4 month period, when a normal amount would have been approximately \$180.00 and therefore she is requesting that the tenants bear the \$481.15 difference.

The tenants testified that:

- They did do work at the rental property for the landlord, however were limited in the amount of work they could do because the landlord failed to provide materials when needed. They further dispute the amount of the discount in the rent

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claiming that the rent would have been \$900.00 per month without the labor agreement, a discount of only \$30.00 per month.

- They originally filed a dispute of the Notice to End Tenancy because they did not believe it was a valid notice, however since the landlord strongly wanted them to vacate they decided to do so, and therefore since it was the landlord who wanted them to leave, they do not believe they should have to pay for any lost rental revenue.
- They did, accidentally, break the medicine cabinet and therefore they accept responsibility for that damage however they believe the amount claimed by the landlord for repair is excessive, as it was a used cabinet.
- They left the rental units in a clean condition, and the landlord's photo evidence was taken up prior to them completing the cleaning. They therefore do not believe they should be charged anything for cleaning.
- The composting toilet was quite full when they moved into the rental unit and they cleaned it out at that time and they believe they maintained it properly during the tenancy and therefore it should not have been in really poor condition.
- They returned all the keys to the landlord and therefore they do not believe the landlords claim for changing the locks is reasonable.
- They did not cause any damage in the rental unit, and any minor repairs that needed to be done either pre-existed or did not exceed normal wear and tear.
- The landlord has not advertised the unit in the Times Colonist, and in fact always advertises online which is where they found the rental unit.
- They did not use an excessive amount of power during their tenancy, and in fact if you divide the amount used by the four months it only comes to \$165.29 per month. Further there was a third cabin connected to the same power and therefore they fail to see how they can be blamed for the full amount used.

Analysis

Rent discount for labour

The residential tenancy agreement is not clear on how much of a discount the tenants are getting per month in exchange for providing labour. Further it is my finding that the landlord is not met the burden of proving that the tenants were provided with materials required to do the labour exchange.

I therefore deny this portion of the claim.

Lost rental revenue

I will allow the claim for lost rental revenue because although the landlord gave the tenants a one month Notice to End Tenancy, they initially disputed that notice and therefore the landlord was put in the position of being unable to re-rent the unit until the dispute was dealt with or the tenants vacated.

Therefore since the landlord has lost the rental revenue of \$595.00 I will allow that portion of the landlords claim.

Medicine cabinet

The tenants do not dispute the fact that they broke the medicine cabinet and therefore I will allow \$50.00 for repair/replacement of that cabinet.

Cabin cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge

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the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

Composting toilet

I deny the claim for cleaning the composting toilet, because there is nothing mentioned on the move-out inspection report regarding the toilet and although the landlords claim they had inadvertently failed to check the toilet, it is the landlords responsibility to ensure that a complete inspection is done.

Replacing the locks

The landlords have failed to provide any evidence to show that the tenants did not returned all the keys for the rental unit and therefore it is my decision that I will not allow the claim for replacing the locks.

Damages to the rental unit

It is also my decision that the landlord has failed to meet the burden of proving that the tenants left any damage beyond normal wear and tear. It's basically their word against that of the tenants and that is not sufficient to meet the burden of proving this portion of the claim.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Advertising in the Times Colonist

The landlord has not advertised in the Times Colonist and I therefore deny this portion of the claim.

Excessive power usage

I also deny the claim for excessive power usage, because the residential tenancy agreement is not specific on how much power the tenants are allowed to use. The landlord's idea of reasonable power usage may be far different than the tenant's idea of reasonable power usage. Therefore in the absence of any specific limit on power usage is my decision that the landlord has not met the burden of proving that the amount of power used was excessive.

Conclusion

The tenants application is dismissed in full without leave to reapply.

I have allowed \$645.00 of the landlords claim, and therefore the landlord may retain the tenants full security deposit of \$435.00, and I have issued a monetary order for the difference of \$210.00.

I further order that the parties each bear their own costs of the filing fees they each paid for the dispute resolution process.

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: October 19, 2010.

Dispute Resolution Officer