



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent; to keep the security deposit; for money owed for damage or loss under the Act; and to recover the filing fees associated with this application.

Both parties attended the hearing, provided affirmed testimony, presented material evidence and made oral submissions.

The tenant submitted in part; a two page letter identifying the origin of second hand smoke in the building, and the times the smoke seeped into his unit between July 30th and August 27th, 2010; a medical note from his family doctor stating that the tenant cannot remain exposed to cigarette smoke; an itemized monetary claim for \$6070.70; and printed references from the internet regarding the landlord's responsibility towards a tenant's loss of quiet enjoyment caused by second hand smoke.

The landlord testified that he faxed his evidence to the Residential Tenancy Branch on the same day he filed for dispute resolution, consisting in part of the tenancy agreement and inspection reports. These documents were not received by the Branch but their contents were accepted from the landlord as oral evidence at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and for what amount?

Is the tenant entitled to a Monetary Order, and for what amount?

Background and Evidence

The parties agreed that the fixed term tenancy started on April 17th, 2010 and was to end on May 31st, 2011. The rent was \$850.00 per month. The tenant paid a security deposit of \$425.00 and a refundable deposit of \$50.00 for an automatic gate remote control. The rental unit consists of a one bedroom apartment in a multi-unit complex located in Coquitlam.

The tenant testified that he presumed that the non-smoking signs posted in the common area meant that the building was completely smoke-free. He stated that soon after moving in, he smelled cigarette smoke coming into his unit. He identified units where tenants were smoking inside, and said that other non-smoking tenants were inconvenienced. The tenant said that he suffered a mild stroke on August 28th, 2010, and produced a note from his family doctor. The tenant said that he liked the unit, did not intend to break the lease, but that the smoke was hazardous to his health and therefore he moved out on August 30th, 2010. He itemized his monetary claim as follows:

- Return of his security deposit:	\$ 425.00
- \$50.00 deposit for gate remote control:	\$ 50.00
- Move-out expenses:	\$ 400.00
- Registered mail expenses:	\$ 20.70
- Transportation expenses to RTB:	\$ 50.00
- Loss of quiet enjoyment:	\$1700.00
- Loss of income:	\$1000.00
- Inconvenience for moving out:	\$1000.00
- Compensation for stroke and health hazard:	\$1000.00
- Compensation for prolonged stay:	\$ 425.00
- TOTAL:	\$6070.70

The landlord testified that the non-smoking pertains only to the common areas of the building. He said that the building is a “positive pressure building”, meaning that it is designed to repel the outside air seeping inside. He said nevertheless that when he received the tenants’ complaints of second hand smoke, he approached the smoking tenants to address the problem. The landlord said that he could not enforce non-smoking inside the units and could only ask the tenants to cooperate. He said that one tenant agreed to smoke some distance away from the building. The landlord also said that at his expense, he offered the tenant to move into other units in the building that were further away from the smoking neighbours, but that the tenant declined. The landlord made a \$500.00 claim for a breach of the material term of the tenancy agreement, and testified that he did not return any of the tenants’ \$425.00 and \$50.00 deposits, pending the outcome of this hearing.

Analysis

The landlord bears a statutory obligation to ensure every tenant has quiet enjoyment of the rental unit throughout the tenancy, and has to demonstrate that he is not negligent to address issues brought to his attention by the tenant. In this case, I find that the landlord was not negligent regarding quiet enjoyment. He responded to the tenant’s complaint by speaking to other tenants, and offered the tenant alternative living arrangements. Therefore in the absence of negligence, I do not find the landlord responsible for the tenant’s monetary losses. The landlord did not breach a material term of the tenancy.

Regarding the landlord’s \$550.00 claim, the amount of second hand smoke entering the tenant’s unit was not determined and I am not persuaded that it could be considered as an unreasonable disturbance to the average person.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

However, I am satisfied that it was too much for this tenant and in the circumstances, I find it reasonable that he had to end the tenancy prematurely and I dismiss the landlord's monetary claim in its entirety.

Regarding the tenant's \$6,070.76 claim, I find that the tenant is entitled to recover his security deposits in the combined sum of \$475.00. There is no legal basis under the *Residential Tenancy Act* on which I can make a finding regarding move-out expenses, mailing or transportation fees to RTB.

Conclusion

Pursuant to Section 67 of the Act, I award the tenant a monetary order in the amount of \$475.00.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: January 12, 2011.

Residential Tenancy Branch