



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 in both parties confirmed that they had nothing further to present, before the hearing was terminated.

Issue(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.

The tenant's application is a request for a monetary order for \$6,220.00.

Landlord's application is a request for a monetary order for \$16,900.00 and a request for recovery of the \$100.00 filing fee.

Tenants application

Background and Evidence

The tenant testified that:

- The landlords lit a bonfire and burned a number of their belongings including a stereo, three hockey sticks, a desk, and a vehicle brush.
- The landlords also broke the rear window of their camper.

- The landlords, common-law husband assaulted their son and as a result they had to vacate the rental unit in fear for their safety.
- The landlords also failed to do repairs that were promised at the beginning of the tenancy.
- The heat in the rental unit was insufficient and the septic field was damaged and a potential health hazard.

The tenants are therefore requesting an order as follows

Burned stereo system	\$200.00
Three burned hockey sticks	\$90.00
Burned desk	\$400.00
Broken camper window	\$500.00
Burned vehicle brush	\$30.00
Moving costs	\$1500.00
Return rent for November 2010 to January 2011 for loss of use and enjoyment.	\$3000.00
Return damage deposit	\$500.00
Total	\$6220.00

The landlord testified that:

- at no time did the landlord ever start a fire and burn any of the tenant's belongings, this is simply not true and in fact would have been very difficult to do in the snow in the winter.
- The landlord did not break any camper windows.
- There was an alleged assault however the matter has not yet gone to court and therefore has, as yet to be proven.
- Further she had already given the tenants a Notice to End Tenancy for cause, and therefore they were required to move anyway. The move was not the result of any alleged assault.
- The tenants refused to participate in the move-out inspection.

The landlords therefore believe that this full claim should be dismissed.

Analysis

It is my finding that the tenants have not met the burden of proving any of their claims against the landlords. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

As far as the claim for burned items and broken camper window, it is just the tenant's word against that of the landlord and that is not sufficient to meet the burden of proving those portions of the claim.

As far as the claim that the tenants had to vacate due to the fear caused by an assault, again they have not met the burden of proving that an assault occurred, as again the only evidence they presented is their word against that of the landlords. Further, the landlord has shown that the tenants had already been given a notice to end the tenancy at the end of February 2011, and since they did not move before that date they did not incur any extra moving costs.

I also deny the claim for lost of use and enjoyment of the rental unit for the months of November 2010 through January 2011, because the tenants have provided no evidence to show that they ever requested any repairs from the landlords, and in fact the tenant testified that they never gave any written request. Therefore since the landlord denies ever receiving any request for repairs, again the tenants have not met the burden of proving this portion of their claim.

I also deny the request for the return of the security deposit because the tenants refused to participate in the move-out inspection required under the Residential Tenancy Act, and by doing so their right to the return of their security deposit has been extinguished.

Landlords application

Background and Evidence

The landlord testified that:

- The tenant son drove his vehicle in a field that was not part of the rental property and she estimates there is \$2500.00 worth of damage caused to the field.
- The tenant son also drove his vehicle over the septic field and caused damage to the septic field which she originally estimated would cost about \$1800.00 to repair however subsequently it was repaired at a cost of \$588.00.
- At the end of the tenancy the tenants left her appliances out in the rain, and her estimate to replace those appliances is \$850.00.
- The tenants also left the rental unit in need of significant cleaning when they vacated and it is her belief that the tenants broke back into the rental unit and urinated on the carpets resulting in the need to replace the damaged carpets.

She did not witness the tenants breaking into the rental unit but she suspects that it was them.

- The tenants broke a window in the barn during the tenancy and it will have to be replaced and she estimates the cost will be approximately \$300.00.
- The tenants also left an upper barn door open and as a result it was broken in a wind storm, and her estimate to replace that is \$600.00.
- At the beginning of the tenancy there were three electric heaters in the rental property, and at the end of the tenancy all three were missing and her estimate to replace them is \$300.00.
- The water tap to the barn was also broken during the tenancy at an estimated repair cost of \$500.00.
- The tenant son also painted graffiti in the barn and her estimate to remove the graffiti is \$1500.00.
- The tenants also left some vehicles on the property and she had estimated a cost of \$1000.00 to remove and store the vehicles however those vehicles were subsequently removed by the tenants at some point even though they were told they were not to be on the property.
- The tenants put a stop payment on both their February 2011 and March 2011 rent cheques and since they did not vacate until well into March 2011 she feels they should be paying that rent plus NSF bank charges of \$50.00.

The landlord is therefore requesting an order as follows:

Repair damaged field	\$2500.00
Repaired to septic system	\$588.00
Replace damaged appliances	\$850.00
Cleaning actual costs	\$1386.00
Broken barn window	\$300.00
Broken barn door	\$600.00
Missing heaters	\$300.00
Broken the barn water tap	\$500.00
Repaint over graffiti	\$1500.00
Unpaid rent for February 2011	\$1000.00
Unpaid rent for March 2011	\$1000.00
NSF bank charges	\$50.00
Filing fee	\$100.00
Total	\$10674.00

The landlords are therefore requesting an order to keep the full security deposit of \$500.00 towards the claim and request for a monetary order he issued for the difference.

The tenant testified that:

- Their son did drive in the field in the middle of winter when there was a lot of snow on the field and the ground was completely frozen and there is absolutely no way he could have caused any damage to the field.
- Their son did not drive over the septic system and in fact the system was already damaged when they moved into the rental property.
- When they were moving out they asked the landlord if she wanted the appliances moved outside and the landlords told them to do so or to put them in the outbuildings, however they were not allowed in the outbuildings and so could not do so. Further the appliances were extremely old and worn out and certainly were not worth anywhere near the amount claimed by the landlords.
- The rental unit may have needed some cleaning when they moved out however they believe they left it in reasonable condition and they certainly never broke into the rental unit afterwards and urinated on any carpets.
- There was no window broken in the barn when they vacated and they have no idea how it was broken.
- The barn door blew open in a storm and the hinge broke and it was certainly not the result of anything caused by them.
- They did not take any heaters it out of the rental unit at the end of the tenancy and in fact they had used their own heaters during the tenancy.
- Their son did paint some graffiti in the barn however the cost to paint over it would be the cost of one can of paint and a couple of hours of painting so probably less than \$100.00.
- They did put a stop payment on the rent checks for the months of February 2011 and March 2011 however that was because their son was assaulted and they were not going to pay rent after that.

They believe this full claim should be dismissed and believe that the landlords only file this claim in retaliation to them filing their claim.

Analysis

Damage to field

It is my decision that the landlord has not met the burden of proving that the tenants caused any damage to field at the rental property. It is basically just their word against that of the tenants and that is not sufficient to meet the burden of proof.

Damage to septic

It is also my decision that the landlord has not met the burden of proving that the tenant damaged the septic system because again it is just her word against that of the tenants.

Appliances

I also deny the claims for damage to appliances that the landlord says were left in the rain. The landlord has supplied no evidence as to the age of the appliances, nor any independent estimates of the cost of replacing the appliances.

Cleaning

I will allow a portion of the landlords claim for cleaning because it's obvious from the photo evidence provided that the rental unit was left in need of significant cleaning however I will not allow the full amount because the landlord has not met the burden of proving that the tenants urinated on the carpets. I allow 50% of the cost for cleaning for a total of \$693.00.

Broken window

I deny the claim for the broken window, as this was on common property used by the landlords and the tenant, and there is no direct evidence to show that this damage was caused by the tenants.

Broken barn door

I also deny the claim for the broken barn door because again there is no evidence that this damage was the result of any wilful or negligent actions on the part of the tenants. Both sides agree that the door was damaged in a windstorm and although the landlord claims that the tenants son had left the door open she is provided no evidence in support of that claim.

Missing heaters

I deny the claim for missing heaters because again the landlord has not met the burden of proving that the tenants removed any heaters from the rental unit.

Damage Water tap

I also deny the claim for a damaged water tap because again this was in a common area used by both the landlord and the tenant and the landlord has not met the burden of proving that this damage was caused by the tenants

Re painting graffiti

The tenant has admitted that her son painted some graffiti and therefore I will allow a small portion of the landlords claim for repainting over graffiti. It is my finding however that the estimate of \$1500.00 is extremely high.

I will allow \$100.00 for repainting over the graffiti.

February 2011 and March 2011 rent

I will allow the claims for rent for the months of February 2011 and March 2011. The tenants lived in the rental unit for the full month of February 2011 and therefore are responsible for the rent for that month. Further the tenants were also in the rental unit for portion of the month of March 2011, and numerous belongings were not removed until well into the month. Therefore I also allow the claim for rent for the month of March 2011.

NSF fees

I deny the claim for NSF fees as the landlord has supplied no evidence of having paid any such fees.

Filing fee

I will allow ½ the claim for the filing fee, as I have allowed a portion of this application.

Therefore the total amount of the landlords claim that I have allowed is as follows:

Cleaning	\$693.00
Painting over graffiti	\$100.00
February 2011 rent	\$1000.00
March 2011 rent	\$1000.00
½ Filing fee	\$50.00
Total	\$2843.00

Conclusion

The tenant's application is dismissed in full without leave to reapply.

I have allowed \$2843.00 of the landlord's application and I therefore order that the landlord may retain the full security deposit of \$500.00 towards this claim and I have issued a monetary order in the amount of \$2343.00. The remainder of the landlords claim is dismissed 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: June 24, 2011.

Residential Tenancy Branch