

DECISION

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

Introduction

A substantial amount of documentary 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.

Issue(s) to be Decided

This is a request for a monetary order for \$5,000.00

Background and Evidence

The applicant testified that:

- The tenants signed a fixed term tenancy agreement that ended on February 28, 2011.
- The tenants gave notice to vacate, and vacated the unit on January 31, 2011.
- He was unable to re-rent the unit in the month of February 2011 and as a result loss the full rental revenue for that month.
- The tenants also failed to appear at the arranged move-out inspection on January 31 and when he arrived he found the place abandoned and left unlocked.
- The tenants failed to clean the rental unit and as a result he had to have a cleaning service come in and clean the unit
- The tenants damage the garage door during the tenancy and as a result it had to be repaired. It was obvious that the door had been driven into.

- During the tenancy the tenants phoned to let them know that the ceiling in the dining room was leaking and thought that perhaps the sprinkler system had sprung a leak.
- He brought in a plumber to try and find a leak however no leak was ever found and the plumber suggested that perhaps the water was due to an overflowing toilet.
- The tenants did not return all the keys at the end of the tenancy and as a result he had to have the locks all rekeyed.
- The tenants were not supposed to put any holes in the walls of the rental unit and yet the tenant's left 196 holes in the walls, as a result all these walls had to be repaired and repainted.
- The tenant also left numerous light bulbs burned out at the rental unit and some fixtures with the incorrect bulbs and as a result they had to be replaced.
- The tenants did not return the garage door openers and in fact they left a garage door opener behind that was not for this rental unit and was not even the proper make.
- The tenants damaged the cable wall plate and as a result it had to be replaced.
- The tenants abandoned numerous items at the end of the tenancy and as a result they had to be moved to storage, and then he had to pay for storage for a total of three months.

The applicant is therefore requesting an order as follows:

Lost rental revenue for February 2011	\$1850.00
Townhouse cleaning services	\$392.00
Estimate to repairs ceiling in dining room	\$900.00
Lock re-keying	\$134.40
Painting supplies	\$288.91
Replace burned-out lightbulbs	\$42.54
Replace to garage door openers	\$108.01
Replace cable wall plate	\$17.58
Move tenants items to storage	\$315.20
First month storage fees	\$155.86

Second month storage fees	\$164.64
Third month storage fees	\$164.64
Registered mail costs	\$10.34
Filing fee	\$50.00
Subtotal	\$5,544.10
Less proceeds from sale of tenants the longings \$250.00 + \$70.00	-\$320.00
Total	\$5,224.10

The applicant is therefore requesting an order that he be allowed to keep the full security deposit of \$925.00 towards this claim, and that a monetary order be issued for the balance of \$4299.10

The respondent testified that:

- They did give notice that they would be ending the tenancy at the end of January 2011, however he was aware that he was breaching the tenancy agreement and was fully willing to pay the February 2011 rent to the landlord.
- He informed the landlord that he was willing to pay the February 2011 rent and therefore he believes she should have had to the end of February 2011 to rectify any problems in the rental unit, even though they had planned to move out at the end of January 2011.
- They did not abandon the rental unit and in fact had fully intended to return and remove the remainder of their belongings however when his wife returned to the rental unit she found the alarm had been set and therefore she was unable to get anything out of the rental unit.
- They had intended to do the move-out inspection January the 31st however due to unforeseen circumstances they had to leave for Kelowna before the arrange time.
- He sent the landlord an e-mail, while on the road, informing him that he would do his best to get things worked out, still fully intending to return and remove the remainder of his belongings.
- The landlord did not cooperate in allowing him to remove his belongings, first locking the unit without authority, second, refusing to allow a friend of his to come and pick

up the belongings, and third refusing to allow him to remove his belongings unless he paid the landlord all the money he was claiming on the application for dispute resolution. Had the landlord cooperated there would have been no need for moving costs or storage costs for their belongings.

- He offered to do the cleaning and repairs however the landlord panicked and did them himself, and since he had been willing to pay rent to the end of February he does not think it's reasonable that the landlord did not allow him that time to do the cleaning and repairs.
- He did not cause water damage to the dining room ceiling. There was water leaking through the ceiling and so he assumed it was the sprinkler system. The landlord had the plumber investigate and they could not find a leak, however a neighbour had suggested it's possibly leaking around the tub fixtures and therefore at the landlord suggestion he put caulking around the fixture and they had no leak after that. There was no negligence on his part that caused the leak.
- The landlord claims that I damaged the garage door however he has provided no before photos even though he claims he does have some.

The respondent therefore believes that other than the lost rental revenue for the month of February 2011 which he had been willing to pay, the remainder of the claim should be dismissed.

Analysis

February 2011 rent

I allow the claim for February 2011 lost rental revenue because the tenants signed a fixed term tenancy that did not end until the end of February 2011 and therefore they are liable for rent to the end of February 2011.

Garage repair

I deny the claim for the garage repair for lack of evidence. The landlord claims that the garage door was damaged further during the tenancy however he has provided no evidence

of the damage, nor any estimates of the cost to repair. The move in inspection report shows that there was some minor damage at the beginning of the tenancy.

Cleaning

I allow the claim for cleaning because I am convinced the tenants did leave the rental unit in need of cleaning. The tenants claim that they would come to do cleaning and repairs however this tenancy was supposed to end on January 31, 2011 pursuant to the tenants own notice, and therefore all cleaning and repairs should have been done by that time.

Dining room ceiling repair

I deny the claim for the dining room ceiling repair because it is my finding that the landlord has not met the burden of proving that this damage was the result of any negligence or wilful actions on the part of the tenant. The landlord stated that the plumber suggested it may have been caused by a toilet overflow; however there is no proof to show that this was the actual cause.

Re-keying the locks

I allow the landlords claim for rekeying the locks because the tenant admitted that they did leave the rental unit unlocked, and therefore it was reasonable for the landlord to replace the locks for security reasons, however since the tenants had not yet returned possession of the rental unit to the landlord, a key should have been given to the tenants.

Painting supplies

I allow the landlords claim for painting supplies because as stated earlier all repairs should have been done by January 31, 2011.

Replace burned-out light bulbs

I allow the landlords claim for replacing the burned-out light bulbs because again all repairs should have been done by January 31, 2011.

Garage door openers

I allow the landlords claim for replacing the missing garage door openers, as the tenant has provided no evidence of having returned the proper openers to the landlord.

Cable wall plate

I allow the landlords claim for replacing the cable wall plate that was damaged during the tenancy because again all repairs should have been done by January 31, 2011.

Moving tenants items to storage, and storage fees

I deny the landlords claim for moving the tenants items to storage and for storage fees because is my decision that it was not a reasonable for the landlord to make the finding that the tenant's belongings had been abandoned.

The Residential Tenancy Regulations states:

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended.

The parties had had e-mail discussions with regards to the tenant's belongings and therefore the landlord knew that the tenants had not yet completely vacated the rental unit, and still intended to return and remove the remainder of their belongings.

In fact the tenants had not yet even return possession of the rental unit to the landlord and therefore the landlord should not have denied access to the tenants, and if he changed the locks for security reasons, a key should have been given to the tenants to allow them access.

It is also obvious that there were attempts by the tenant to recover the belongings and in fact the landlord even admitted that he refused to release the tenant's belongings to an agent of the tenant that had been authorized by the tenant.

Registered mail

I will not issue any order for the cost of registered mail as this is a cost related to the dispute resolution process and I have no authority to award costs other than the filing fee.

Filing fee

I will allow the landlords request for recovery of the filing fee, as he has still established a substantial claim against the tenants.

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

February 2011 lost rental revenue	\$1850.00
Re keying the locks	\$134.40
Painting supplies	\$288.91
Light bulbs	\$42.54
Garage door openers	\$108.01
Cable wall plate	\$17.56
Filing fee	\$50.00
Sub total	\$2883.42
Less proceeds of sale of tenants items	-\$320.00
Total	\$2563.42

Conclusion

I have allowed \$2563.42 of the landlords claim, and therefore the landlord may retain the full security deposit of \$925.00 and I have issued a monetary order in the amount of \$1638.42.

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 02, 2011.

Residential Tenancy Branch