



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenants: MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The landlord and both tenants attended the conference call hearing but the landlord did not testify. He was represented by his father who gave affirmed testimony. Both tenants testified, and the tenants and the landlord's representative were given the opportunity to cross examine each other on their evidence. The hearing commenced on April 21, 2011, but did not conclude and was adjourned to May 25, 2011 for a continuation of the evidence and submissions by the parties.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This tenancy began as a fixed term tenancy on July 1, 2009 which expired on June 30, 2010. Another fixed term tenancy agreement was entered into by the parties prior to the end of the first fixed term that contains an expiry date of July 1, 2011. The tenants moved from the rental unit on November 30, 2010, having given the landlord written notice on October 31, 2010. Copies of the tenancy agreements and the written notice were provided in advance of the hearing. The tenants provided their forwarding address in writing on their notice to end the tenancy and again in an email on December 20, 2010, which is acknowledged by the landlord.

Rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month, and on June 5, 2009 the landlord collected a security deposit from the tenants in the amount of \$600.00. The rental unit is a suite in a house in which the landlord also occupies a suite. A move-in condition inspection report was completed by the parties on July 1, 2009 and a move-out condition inspection report was completed on November 30, 2010 but copies of those reports were not provided for this hearing.

The landlord claims 1 month of rent in the amount of \$1,200.00 for loss of revenue due to the tenants' breach of the fixed term; \$239.56 for advertising costs due to the tenants' breach of the fixed term; \$30.00 for the cost of removing garbage left by the tenants at the end of the tenancy; \$425.60 for damage caused by the tenants to the garage door, and \$68.77 for an electricity bill. Copies of invoices for the cost of advertising were provided in advance of the hearing, as well as 2 estimates for replacing panels to the garage door. One of the estimates provided is for replacement of the whole door, and the other is for replacing 2 panels only. A copy of an invoice for garbage removal was not provided. During the course of the hearing, the landlord's agent conceded that the landlord had not provided any evidence for the cost of removing garbage and withdrew that portion of the landlord's claim.

The landlord's agent testified that the landlord started to advertise the unit for rent commencing November 1, 2010 on Castanet, and then other advertisements were run on November 21, 2010. The landlord provided invoices for the advertisements ran in RentBC.com, which provides no date, as well as with My Ideal Home on November 22, 2010, Okanagan Valley Newspaper Group on November 22, 2010 and BC Classified on November 21, 2010. When asked why the landlord did not start to advertise prior to November 21, 2010, the landlord's representative stated that the landlord advertised on

Castanet on November 1, 2010 but the advertisement was not archived. No evidence of advertising on Castanet November 1, 2010 has been provided.

He also stated that only 2 people viewed the unit after the first advertisement and only 1 after, and the tenants had signed another fixed term tenancy agreement prior to giving their notice to vacate. On November 27, 2010 the landlord found a new tenant for January 1, 2011 however in cross examination he explained that the unit had been advertised for one month of free rent and the new tenants were provided with one month of free rent. He also stated that it was not the landlord's regular practice, but done for business only. The new tenants moved in on December 1, 2010 and signed a tenancy agreement on November 27, 2010 for a fixed term from December 1, 2010 until May 1, 2012.

The landlord's agent stated that the tenants were required to pay any amount over \$250.00 of the Fortis electricity bills and provided a copy of a bill in advance of the hearing. The bill is dated November 23, 2010 for the period covering September 21, 2010 to November 23, 2010 in the amount of \$318.77.

With respect to the damage to the garage door, the landlord's agent testified that the tenants' young son dented the garage door and the insurance carried by the tenants did not cover the cost. The landlord also claims \$425.60 for replacement of 2 panels on the garage door. During cross examination he testified that the photographs provided in advance of the hearing show a smear which was caused by vandalism that is not the responsibility of the tenant.

The landlord did not provide a copy of the move-out condition inspection report, however, the landlord's agent testified that the tenant wrote on the bottom of the report, "Lower ½ of garage door already discussed in previous documents and we explained already why we are not responsible. Please see other documents." He also stated that the tenant left the landlord a voice message on November 12, 2010 that said, "Make sure I'm not paying for the vandalism."

The landlord remained in attendance throughout the hearing but chose not to testify. Several other letters and emails between the parties were provided in advance of the hearing by the landlord.

The tenants claim \$440.40 for the actual cost of renting a storage space that the landlord had promised them, in addition to damages for loss of storage space in the amount of \$1,128.96 and \$47.04 for a second storage unit used for moving purposes; \$2,400.00 for loss of quiet enjoyment; \$1,104.15 for cable bills they paid that were to be included in the rent; \$402.61 for the cost of a postal box rental; and \$1,101.51 for

interest the female tenant was required to pay on a student loan due to the landlord's failure to give the tenants a mail key or deliver their mail within a reasonable time.

The tenants testified that they wanted to stay in the rental unit, but after they gave the landlord a letter on May 20, 2010 requesting storage space and repairs, the landlord served them on May 31, 2010 with a 2 Month Notice to End Tenancy for Landlord's Use of Property, and made the tenant's lives miserable. They stated that the landlord had asked them on April 29, 2010 to sign another one-year lease, and the tenants wrote the letter on May 20 in response to that offer. After receipt of the letter, the landlord kept the TV loud all hours, waking up their 2 children and then served the notice to end the tenancy on the tenants. A copy of the May 20, 2010 letter and the landlord's notice were provided by the tenants in advance of the hearing. They also testified during cross examination that they did sign a further fixed term tenancy agreement on June 4, 2010, prior to the end of the first fixed term, but only because they were threatened with eviction. They stated that they couldn't afford to move, so they had to sign a new tenancy agreement or the landlord would invoke the 2 month notice and they would have to move by the end of July, 2010. When asked during cross examination whether or not the tenants complained to the landlord about the noise, the tenants responded that they only did once because they were threatened with eviction when repairs were requested, so they bought earplugs instead of complaining. The tenants claim compensation in the amount of \$2,400.00, being the equivalent of 2 month's rent for loss of quiet enjoyment.

The tenants also testified that during the initial viewing of the rental unit they were promised a storage area behind the furnace room and under the stairs but the day they moved in the landlord told them they couldn't have the storage room because he had boxes in there. The room was about 61 square feet, and the tenants had to use a bedroom for storage which required their kids to share a bedroom. The tenants rented a storage unit, and provided a receipt in the amount of \$440.40 for storage between the dates of July, 2010 and December, 2010. He further testified that some of their belongings had to be left outside. The tenants also rented another storage unit for one month for moving purposes toward the end of the tenancy at a cost of \$47.04.

The tenants also testified that the first tenancy agreement included basic cable, but the tenants were not provided with that utility. The cable company changed the policy and the tenants then had to start paying for it, so the landlord changed the tenancy agreement to add storage and remove cable. They stated that the cable company told them that they couldn't feed off the landlord's cable. They stated that a basic package costs \$64.95 per month. The tenants claim \$1,104.15 for cable they paid over a 17 month period. They stated that they agreed to pay for it if they were provided with

storage. The landlord then gave them a smaller storage room beside the furnace, and then a short time later he told them it was a fire hazard and they could no longer use it. During cross examination, the tenant testified that the tenancy agreement did not specify that storage was included, but it was a verbal agreement made when the parties initially walked through the rental unit.

The tenants also testified that they were supposed to get a mail key, which was not provided to them. They stated they went weeks without getting their mail and contacted the Residential Tenancy Branch who advised them to request it in writing from the landlord. They did make that written request prior to signing the new tenancy agreement and got a notice to end the tenancy 10 days later. They also missed a deadline for a student loan application. The female tenant is a student and a federal program allows low income earners to get relief by not paying interest while not making payments, and she missed a critical deadline and was denied that relief. The tenants claim \$1,011.51 for the interest she was consequently required to pay, and \$402.67 for the cost of a postal box rental and a change of address fee paid in order to get their mail directly instead of through the landlord, and provided a copy of the postal rental receipt as well as a Statement of Accounts from a federal government's Financial Services in the female tenant's maiden name showing interest of \$62.88 for the period of March 13, 2011 to April 3, 2011. The tenant testified that the interest is 5%, calculated daily. During cross examination they testified that the landlord usually delivered the mail once every two weeks prior to the postal box rental.

The tenants also testified that the landlord was to mow the lawn but he did not and the neighbours complained, so the tenants did it. The lawnmower was in the landlord's garage and they had to ask for it. After the end of the first tenancy agreement, the landlord left the lawnmower beside the house, but no gas in it. The tenants claim \$200.00 for lawn mowing.

With respect to the garage door, the tenants testified that their 4 year old son had played hockey in the driveway and caused some minor dents. A few weeks later a large black streak was left on the door from vandalism which the landlord did not deal with. They feel that the landlord did nothing about it because he assumed the tenants would replace the panels with their insurance policy.

The tenants also dispute the landlord's claim for loss of revenue. They stated that the new tenants moved into the rental unit on December 1, 2010, the day after the tenants moved out, and the landlord gave them a month of rent for free. Further, since the tenants were not provided with the space promised for storage, and due to the landlord's intimidation of a threat of eviction, the tenants feel they were justified in breaking the fixed-term agreement. The tenants claim they were enticed or forced to

sign the second tenancy agreement, fearing eviction if they didn't, and stated that the landlord's agent told them that professional tenants were the worst tenants, and by calling the tenancy branch the tenants were trying to be professional tenants, and then offered the tenants another chance, and he would set up a meeting with the tenants and the landlord. The landlord's agent did not dispute that evidence.

Analysis

I have reviewed the evidence provided by the parties, and find that the parties entered into a fixed term agreement on June 5, 2009 which was set to expire on June 30, 2010. On May 20, 2010 the tenants provided the landlord with a letter requesting repairs and storage space. The landlord served the tenants with a notice to end the tenancy for the landlord's use of property on May 31, 2010. Prior to the end of the fixed term the parties entered into another fixed term agreement on June 4, 2010 which was to expire on July 31, 2011.

I have also viewed the new tenancy agreement which I find is evidence that the landlord re-rented the rental unit on November 27, 2010 for an 18 month fixed term commencing December 1, 2010 with the first month of rent free. The landlord's agent originally testified that the rental unit was re-rented January 1, 2011, and it wasn't until the landlord's agent was cross examined that he provided the testimony that the unit was actually rented for December 1, 2010 and that he gave the new tenant the first month of rent free. I have also reviewed the invoices and landlord's evidence respecting advertising the rental unit after receiving the tenants' notice, and I find that the landlord has failed to establish that it was necessary to offer a month's rent for free, and therefore, I find that the landlord has failed to mitigate his loss. Therefore, the landlord's application for loss of revenue must be dismissed. With respect to advertising costs, I find that the tenants did break the terms of the fixed term tenancy, and therefore, the landlord's application for \$239.56 is justified.

I have also examined the Fortis BC electric bill provided by the landlord, and it covers a period from September 21, 2010 to November 23, 2010 in the amount of \$318.77. The tenancy agreement is clear with respect to payment of that utility, and I find that the landlord has established a claim for \$68.77.

With respect to the garage door, I must apply the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;

3. The amount of such loss or damage;
4. What steps the claiming party took to mitigate, or reduce such damage.

I have viewed the photographs provided by the parties and it is difficult to determine the extent of the damage, with the exception of the vandalism damage for which the parties agree the tenants are not responsible for. I also note that the vandalism damage appears to be isolated to one panel of the door. Therefore, if I were to award the landlord damages, it could not be for that panel because the landlord has failed to establish element 2 of the test for damages. I accept the undisputed evidence of the parties that a 4 year old child hit the door with a ball, puck or other toy which caused dents in the panels. The *Act* requires the tenants to repair any damage caused by the tenants during the course of the tenancy, and I find that half of the bill, for one panel, is justified in the circumstances, for a total of \$212.80.

With respect to storage space, I have reviewed a letter provided by the landlord that is written by the tenant to the landlord dated May 20, 2010. That letter states, among other things, "Our biggest concern has been the lack of storage space. As per our initial verbal agreement the storage in the Furnace room was supposed to be ours to use. As a family of four, storage is essential and having that space was one of the main reasons we moved into this space. Having known this earlier we would have not been living here, as our budget did not allow us to acquire additional storage space. On the day we moved in you informed us that we were no longer allowed to use that space which started a major source of stress for my family and myself over the past year." It's clear that the tenants felt that storage space was a material term of the tenancy. The tenants rented storage space on July 19, 2010 and have proven that they paid \$487.44. One of the records provided shows \$59.04 for the first partial month and \$94.08 each month thereafter until December for which they paid \$5.04, for a total of \$440.40. The other record shows a different storage unit for the months of November and December, 2010 costing \$47.04 which the tenants testified was used for moving purposes. The evidence of the tenants is that the parties agreed verbally to use of the space, and the landlord chose not to testify. The landlord's agent was not able to dispute that evidence, and therefore I find that the storage space was a material term of the tenancy, it was agreed to by the parties, and the tenants were denied that space. The *Act* states that a landlord must not terminate or restrict a service or facility, and I find that storage space was a facility that was agreed upon and denied the tenants, and their claim for \$440.40 in actual storage costs is justified. I do not find that the landlord is responsible for the storage space used for moving purposes.

The tenants further use the figures for the rental space at \$94.08 per month to claim loss of storage space that was promised, and I find that claim is justified in the

circumstances. In the letter of May 20, 2010, the tenants requested that the landlord provide the space or decrease the rent so that they could afford separate storage. I also note that the landlord served the tenant with the 2 month notice to end the tenancy 11 days after the tenant's letter. Further, the *Residential Tenancy Act* states that if a landlord intends in good faith to occupy the rental unit, the landlord is at liberty to serve the notice to end tenancy. In this case, I find that the tenants have proven that the landlord did not issue the notice in good faith and that the landlord issued the notice as an abuse of the process and the *Act*. The tenants' claim for denied storage space has been established in the amount of \$1,128.96.

The tenant's evidence shows that they rented a post office box on August 25, 2010 and paid \$211.68. I find that the addendum to the tenancy agreement states that "All mail belonging to the tenant shall be delivered by the landlord on a daily basis into the tenant's personal mailbox." I further find that the onus was on the landlord to provide a mailbox and deliver the tenants' mail to it daily, or deliver the tenants' mail to them daily, and that the landlord failed to do either. Therefore, I find that the tenants' claim for mailbox rental and the change of address is justified in the amount of \$402.67.

I further find that the tenants have satisfied the 4-part test for damages with respect to the loss of an interest free opportunity on the repayment terms of a student loan, and that the landlord's failure to deliver mail to the tenants resulted in that loss. Therefore, I find that the tenants have established a claim for \$1,101.51.

With respect to yard maintenance, I find that the addendum to the tenancy agreement is clear that the lawn area to the back end of the building is defined as the common area, and the landlord is responsible for regular maintenance to the common area at the landlord's discretion, within a reasonable period of time. It further sets out the portions of the yard that the tenants have access to and states that no other part of the property shall be used by the tenant without written permission of the landlord. I find that the tenants had no obligation to cut the grass, and even if the landlord failed to do so, there is no agreement that the tenants would do so or would be paid for it, and therefore, the tenants' application for lawn care costs must be dismissed.

With respect to the tenants' claim for loss of quiet enjoyment, I accept the evidence of the tenants that the landlord kept the TV loud all hours waking their children, and also issued a notice to end the tenancy after the tenants gave the landlord the May 20, 2010 letter. The landlord did not dispute that evidence. I am also satisfied that the landlord deliberately disturbed the tenants in an attempt to have them move out so that he would not have to deal with the concerns set out in their letter. The *Act* does not, however, allow me to award punitive damages, which are damages to punish a wrong-doer. The

Act does allow me to award aggravated damages, which I find are just in the circumstances. In determining the amount of damages the tenants should be awarded, I consider that the *Act* requires the landlord to give the tenants 2 months notice and the equivalent of one month's rent as compensation when a 2 Month Notice to End Tenancy for Landlord's Use of Property is issued, and if the landlord failed to use the property for the purpose stated in the notice, the tenants would be entitled to the equivalent of 2 month's rent. Having found that the landlord issued the notice to end tenancy that was not issued in good faith, I find that the tenant's claim of \$2,400.00 is just in the circumstances.

The tenants also provided a copy of an invoice for \$323.25 for moving expenses. I find no justification for the landlord's responsibility of reimbursing the tenants for moving.

In summary, I find that the landlord has established a claim for \$239.56 for advertising costs, \$68.77 for the electric bill, and \$212.80 for the garage door, for a total of \$521.13. I further find that the tenants have established a claim in the amount of \$1,101.51 for loss of interest on the student loan, \$402.67 for mailbox rental, \$2,400.00 for loss of quiet enjoyment, and \$1,569.36 for loss of storage space. The tenants are also entitled to return of the security deposit in the amount of \$600.00, for a total of \$6,073.54. Pursuant to Section 72 of the *Residential Tenancy Act*, I find it reasonable to set off the amounts, and find that the tenants are entitled to a monetary order for the difference of \$5,552.41.

Since both parties have been partially successful in their applications, I decline to order that either party recover the filing fee for the cost of these applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of \$5,552.41. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: June 17, 2011.

Residential Tenancy Branch