



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlords and by the tenant. The landlords have applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlords for the cost of this application.

One of the landlords and the tenant attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. The parties were also given the opportunity to cross examine each other on their evidence. However, some evidence provided by the landlord was not received by the tenant or by the Residential Tenancy Branch within the time set out in the *Residential Tenancy Act* and the Rules of Procedure. The tenant did not consent to the late evidence being considered, and therefore, that evidence is not considered in this Decision. The landlord also provided evidence after the conclusion of the hearing, which is not considered in this Decision. All other evidence and the testimony of the parties have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?
Are the landlords entitled to a monetary order for unpaid rent or utilities?
Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

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

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this tenancy began on November 30, 2009 and ended on February 5, 2011. Rent in the amount of \$950.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00. The rental unit is a suite within a duplex, and the landlord does not reside in that building.

The landlord testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy. She stated that on February 5, 2011 the tenant and her boyfriend both attended for the move-out condition inspection. She stated that the tenant left a number of items unclean and claims \$500.00 for the time spent cleaning after the tenant moved out. Copies of the inspection reports were provided in advance of the hearing, and are done on 2 separate forms; one completed at the commencement of the tenancy and another at the end of the tenancy.

The landlord further testified that a garage on the property was being used to store items belonging to the landlord, and the tenants stole some of it, for which the landlord claims \$1,000.00. She is not able to provide any substantial evidence that the missing items were taken by the tenant, but stated that no one else had access to the garage. Further, the tenancy agreement states that the garage is not included with the rent. The landlord also provided a letter signed by the gentleman who changed the lock stating that 90% of the boxes previously in the garage were missing.

The landlord further testified that the parties had entered into a fixed term tenancy which expired on January 1, 2011, and then reverted to a month-to-month tenancy. The tenant moved from the rental unit without the required notice, and the landlord claims one month of rent in the amount of \$950.00. A copy of the tenancy agreement was provided by the landlord in advance of the hearing, and it is unclear whether it was intended to be a month-to-month tenancy or a fixed term tenancy, due to crossed out handwriting and other irregularities in handwriting. Also provided were 2 letters written by the tenant to the landlord. The first is dated January 5, 2011 stating that the tenant will be moving from the rental unit but no date for the move is specified. The second letter is dated January 20, 2011 and states that the tenant would be moving out on February 5, 2011. The landlord also provided a written account of the events, and

states in one statement that the tenant gave verbal notice on January 24, 2011 to vacate the rental unit on February 5, 2011, and in another statement she states the tenant gave verbal notice on January 5, 2011 to move out on February 5, 2011.

The landlord also testified that the tenant was not caring for the property, the yard or the gardens to an acceptable standard and she was required to attend at the rental unit to do the yard work and tend the gardens.

The tenant testified that she gave the landlord her forwarding address in writing on February 5, 2011, and the landlord has not returned any portion of the security deposit, nor did the tenant authorize the landlord to keep any portion of it. A copy of the note was provided in advance of the hearing. She further testified that the landlord filed the Landlord's Application for Dispute Resolution claiming damages before the tenant had moved out.

The tenant further testified that she had a baby 2 days after the commencement of the tenancy, and therefore didn't move into the rental unit right away. She stated the landlord completed the Tenancy Agreement showing different dates than the real ones, for tax purposes. The tenant's boyfriend stayed at the rental unit, but the tenant stayed at her dad's for a couple of months and slowly moved in.

She also testified that the landlord completed a Tenancy Agreement but did not provide the tenant with a copy despite numerous requests. The tenant received a copy of it with the evidence that the landlord provided for this hearing and it has been altered.

The tenant further testified that the landlord came to the rental unit every other day. She accused the tenant of stealing, and rang the door bell often, disturbing the tenants. They politely asked her for their privacy but she replied, "No." The landlord kept showing up and the tenant started marking the dates on her calendar and provided a copy of the calendar as evidence prior to this hearing. The tenant eventually video-taped the landlord on the property and while doing so, the landlord grabbed her by the hair and put a garden tool in her face. She also stated that only during the month of November, 2010 did the landlord not bother the tenants, but did for the rest of the entire tenancy.

The tenant also testified that the parties had a verbal agreement wherein the tenant would be permitted to use some of the storage space in the garage. One day in March or April, 2010 while she was not at home, the landlord had the lock changed on the storage garage without notice to the tenants. She stated her boyfriend was at home at the time but works nights, so he was sleeping. The tenant also testified that she contacted the gentleman who changed the lock who stated that he did not sign a

document stating that 90% of the boxes in the garage were missing, and that he had no idea what was contained in the garage prior to changing the lock. The tenant feels that the landlord has forged the signature of the gentleman on the document that the landlord provided in evidence.

The tenant further testified that the landlord left many letters posted to the door of the rental unit, some of which ask the tenants to move out, and then the landlord told them that since they signed a lease, they could not move until the end of the fixed term. A number of letters and notes were provided in advance of the hearing

On New Year's Eve, the landlord gave the tenant a written notice to inspect the rental unit, but no time or reason was written on the notice. The tenant called the landlord and told her they were busy, but the landlord called the police to attend with her and went into the rental unit anyway. The police told the tenants they should move as soon as possible. Then, 15 days later, the landlord wanted to inspect again without any notice to the tenants, and showed up at the rental unit with a friend.

The tenant also stated that the move-out condition inspection was completed by her dad, and the landlord has altered that document. She stated that the document contains handwriting with different pens, and provided a copy as well.

The tenant claims \$31.66 per day for 60 days that the landlord disturbed the tenants, costs for moving at \$210.33, double the amount of the security deposit, or \$950.00, the cost of providing photographs and photocopies in the amount of \$34.83 for preparation for this hearing, and \$280.00 for 14 hours of work spent preparing, and recovery of the \$50.00 filing fee for the cost of this application, for a total of \$3,424.76. In calculating the dollar amount claimed for the disturbances, the tenant stated that the monthly rent equates to about \$31.66 per day.

The tenant's witness testified that he resides with the tenant, and the landlord was constantly attending at the rental unit invading their privacy. He stated that at first, they didn't know how often the landlord was allowed under the *Act*. He told the landlord that she wasn't welcome, and then the landlord accused the tenants of stealing.

Analysis

With respect to the landlord's application for unpaid rent, I find that the tenant did not provide the landlord with 1 month's written notice as required under the *Residential Tenancy Act*. Therefore, the landlord is entitled to recovery of the loss of revenue for one month, or \$950.00.

In a claim for damages, the onus is on the claiming party to pass 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 damage or loss; and
4. what efforts the claiming party made to mitigate the loss or damage.

In this case, I find that the landlord has failed to establish that the tenant stole any items from the garage. There is no evidence to substantiate that claim, and therefore, I find that the landlord has failed to establish any of the above elements.

With respect to the claim for cleaning, I find that the documents provided by the landlord are certainly in dispute. The tenant claims that the documents have been altered, and I have reviewed the move-in and move-out condition inspection reports and find that both documents contain handwriting in a dark pen, a light pen and a medium pen. If the landlord had not altered the documents, the pen colour would not be different throughout the document. Therefore, I find that the documents cannot be relied upon, and the landlord has failed to establish any damage caused by the tenant.

With respect to the tenant's claim for double recovery of the security deposit, the *Residential Tenancy Act* states that the landlord must return the security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. In this case, I find that the tenant provided a forwarding address and ended the tenancy on February 5, 2011, and the landlord applied for dispute resolution claiming against the deposit on February 3, 2011. Therefore, the tenant is not entitled to double recovery of the security deposit.

I have also examined the calendar provided by the tenant, and I agree that the tenancy has been devalued by the landlord's continuous attendance at the rental unit. The *Residential Tenancy Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right enter the rental unit, which is monthly. The *Act* further specifies that a landlord must not enter a rental unit for any purpose unless the landlord gives at least 24 hours and not more than 30 days written notice that contains the purpose for entering, which must be reasonable, and the date and time of the entry which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. The parties have both testified that the landlord attended on the property numerous times without the consent of the tenant, and the tenant asked

the landlord to refrain from attending. The landlord continued attending almost throughout the tenancy without providing the required notice, and contrary to the *Act*. The tenant has claimed an equivalent of one day of rent for each day that the landlord attended the rental unit, and I find that the amount of \$31.66 per day is reasonable. I also find that the landlord was permitted to inspect the rental unit monthly, and therefore, the number of days claimed by the tenant should be reduced from 60 to 45 days over a 15 month period. Therefore, I find that the tenant is entitled to a monetary order in the amount of \$1,424.70.

With respect to the tenant's claim against the landlord for moving costs, I find that the tenant has failed to establish any requirement for the landlord to provide the tenant with moving expenses.

The tenant's application for preparation for this hearing, and for the time spent preparing for the hearing are not supported by the *Act*, and I decline to award any amount for those items claimed.

I also find that the landlord holds a security deposit in the amount of \$475.00 in trust, which the tenant is entitled to recover.

Having found that the landlord is owed \$950.00 and the tenant is owed \$1,424.70 plus the security deposit in the amount of \$475.00, I find that the amounts ought to be set off from one another, and I find that the tenant is entitled to a monetary order for the difference, in the amount of \$949.70. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partially successful with the 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 tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$949.70.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's application for an order permitting the landlord to keep all or part of the security deposit is hereby 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