



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenant for damage to the rental unit and damage or loss under the Act, regulations or tenancy agreement?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced January 1, 2011 and ended April 29, 2011 by way of a signed Mutual Agreement to End Tenancy. The tenant paid a \$800.00 security deposit and was required to pay rent of \$1,600.00 on the 1st day of every month.

On April 22, 2011 the police notified the landlords that a marijuana grow-operation was found at the rental unit and the parties signed the Mutual Agreement to End Tenancy that same day. On April 28, 2011 the municipality sent a letter to the landlords advising the landlords that the landlords had to undertake specific remediation work, cleaning, and decontamination according to the applicable bylaw. The hydro was disconnected to the property and the Occupancy Permit was suspended.

The landlords proceeded to undertake the necessary remediation, as directed by an approved Environmental Inspector, and completed the work in early June 2011 and the Occupancy Permit was re-instated.

Below I have summarized the landlord's claims, as amended:

| <u>Item</u> | <u>Reason</u> | <u>Amount</u> |
|---|--|---------------|
| Dump fees | Disposal of contaminated drywall | 180.85 |
| New locks | Locks changed by tenant and did not want tenant to have further access to property | 98.52 |
| Furnace cleaning | As required by Environmental Inspection | 285.60 |
| Carpet cleaning | As required by Environmental Inspection | |
| Electrical Repair/permit | Required by municipal by-law and BC Hydro | 425.00 |
| BC Hydro fees, alteration charge, reconnection charge and usage | Amount charged by BC Hydro | 585.76 |
| Air scrubber rental | As required by Environmental Inspection | 207.92 |
| Landlords' loss of time | Cleaning, repairs, drywall removal, painting: 40 hours x \$10 per hour | 400.00 |
| Loss of rent for May 2011 | Unable to re-rent unit due to damage | 1,600.00 |
| Total amended claim | | \$ 5,176.54 |

The tenant acknowledged some responsibility for many of the costs claimed by the landlords but was of the position he should not be fully responsible for all of the costs for the following reasons:

1. The landlords did not perform any inspections during the tenancy;
2. The environmental inspection report indicates there were not cut outs for ventilation ducting in the house;
3. The tenancy ended April 29, 2011 and the tenant is not responsible for paying rent for May 2011;
4. The tenant agreed to end the tenancy shortly after the marijuana grow-operation was discovered and ending the tenancy so quickly precluded him from performing some of the cleaning and repairs himself.

The landlord responded to the tenant's submissions as follows: there were two holes cut in the walls, not for ventilation, but access to electrical wiring; the landlords offered to pick up rent payments from the tenant but the tenant indicated he wished to deliver payments to the landlord; the landlords incurred actual costs greater than those claimed; and, the landlords removed the contaminated drywall themselves, took it to the dump and performed the required three cleanings of the surfaces in the rental property.

The landlords provided the following documentary evidence in support of their claims: mutual agreement to end tenancy; tenancy agreement; move-in inspection report; photographs of the residential property including the house and garage; the April 28, 2011 letter from municipality; the environmental inspection report; and, receipts for carpet cleaning, electrical repairs and permit, equipment rental, dump fees, new locks, environmental inspection and report, and furnace cleaning.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of a tenancy. It is undisputed that a marijuana grow-operation was set up in the rental unit and the garage during the tenancy and based upon the evidence before me, including the environmental report, I accept that installation of this clandestine laboratory created damage that required repairs and special cleaning that was not done by the tenant by the end of the tenancy. Therefore, I find the landlords have established that the tenant violated section 32 of the Act.

Based upon the evidence before me, I am satisfied that the tenant's violation of the Act caused the landlords to incur damages or loss as a result of the violation, including cut outs for accessing electrical wiring. I am further satisfied that the landlords have provided sufficient evidence to verify the amounts claimed. Finally, I am satisfied that

the landlords acted reasonable quickly to remediate the property and mitigate their loss of rent or further damage to the property.

With respect to the claim for loss of rent, specifically, I find the claim for loss of rent is the direct result of damages caused to the property by the tenant's actions and I find the landlords entitled to recovery of the loss of rent for May 2011. Therefore, I reject the tenant's submission that he is not responsible for loss of rent because the tenancy ended April 29, 2011.

With respect to the claim for the landlords' loss of time spent cleaning and removing contaminated drywall I find the \$400.00 claim very reasonable given the scope of the work required, as indicated in the environmental inspection report. Therefore, I reject the tenant's objections to this claim.

With respect to the cost of installing new locks I accept this claim to be reasonable given the criminal element the tenant brought to the residential property. Therefore, I grant the landlords' request to recover this cost from the tenant.

In consideration of the tenant's submissions I find as follows. I was not provided any evidence from the tenant that the landlords knew or ought to have known of a marijuana grow-operation at the property, prior to notification by the police, or failed to take sufficient action in response to the knowledge. The tenancy was only in its fifth month when the landlords were notified of the grow-operation and the tenant had not raised concerns to the landlord that would cause for the landlords to inspect the property in such a short term.

Section 44 of the Act provides that parties may mutually agree to end a tenancy, which was done in this case. However, the Act does not provide an exemption from rights and obligations under the Act when parties mutually agree to end a tenancy. Nor do I find sufficient evidence that the landlords agreed to waive their entitlement to return of an undamaged and reasonably clean rental unit. Therefore, I find the tenant remained obligated to fulfill his obligations under section 32 of the Act, as outlined above, even though the tenancy ended by mutual agreement.

In light of the above findings, I grant the landlords' request for compensation in the total amount of \$5,176.54 plus the filing fee. I authorize the landlords to retain the tenant's security deposit of \$800.00 and provide the landlords with a Monetary Order in the net amount of \$4,426.54 to serve upon the tenant. The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of \$4,426.54 to serve upon the tenant. 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: August 11, 2011.

Residential Tenancy Branch