



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, LRE, RR / OPR, MNR, MND, MNDC, MNSD

Introduction

A hearing was previously convened on November 21, 2011 in response to an application by the tenants for cancellation of a notice to end tenancy / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlords' right to enter the rental unit / and authority to reduce the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared but, at the request of the landlords, the hearing was adjourned in order to permit the proper exchange of documents between the parties. An interim decision dated November 21, 2011 was issued.

Thereafter, the landlords filed an application for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and retention of the security deposit.

The application of neither party includes specific application to recover the filing fee.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from May 1, 2011 to May 1, 2012. Monthly rent of \$1,250.00 is payable in advance on the first day of each month, and a security deposit of \$500.00 was collected. While the tenants and an agent representing the landlords completed a walk-through of the unit at the start of tenancy, there is no move-in condition inspection report in evidence.

By e-mail dated October 1, 2011, the tenants gave notice to end the tenancy effective December 1, 2011. Thereafter, the tenants filed an application for dispute resolution

which was received by the Residential Tenancy Branch on October 31, 2011. Following this, arising from rent which remained unpaid when due on November 1, 2011, the landlords issued a 10 day notice to end tenancy for unpaid rent dated November 7, 2011. The tenants made no further payment toward rent and vacated the unit on or about November 17, 2011. There is no move-out condition inspection report in evidence.

The landlords commenced advertising for new renters prior to the time when the tenants vacated the unit. The landlord testified at the hearing that new renters have been found for the unit effective February 1, 2012. The landlord also testified that the new renters signed a tenancy agreement pursuant to which the tenancy is a year-long fixed term, and pursuant to which monthly rent is \$1,200.00.

As the subject tenants have vacated the unit, I consider the landlords' application for an order of possession to be withdrawn. Further, I consider as withdrawn, the tenants' application to have the notice to end tenancy set aside, as well as the application for an order suspending or setting conditions on the landlords' right to enter the rental unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca Sections of the Act which are particularly relevant to the circumstances of this dispute are referenced below.

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**, and provides:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 46 of the Act speaks to **Landlord's notice: non-payment of rent**, and provides in part:

46(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the documentary evidence which includes, but is not limited to, a considerable number of e-mail exchanges between the parties, photographs (landlords) and a USB video flash (tenants), in addition to the affirmed testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

LANDLORDS' CLAIM

\$7,500.00: unpaid rent / loss of rental income (6 month period from November 2011 to April 2012). I find that after the 10 day notice to end tenancy for unpaid rent dated November 7, 2011 was served on the tenants in person on that same date, the tenants made no further payments toward rent and vacated the unit on or about November 17, 2011.

I find that the landlords undertook to mitigate the loss of rental income by advertising for new renters prior to the time when the subject tenants vacated the unit. As previously noted, it is anticipated that new renters will take possession of the unit effective February 1, 2012.

Following from the above, I find that the landlords have established entitlement to unpaid rent / loss of rental income for November & December 2011, as well as January 2012 in the total amount of \$3,750.00 (3 x \$1,250.00).

I further find that the landlords have established entitlement to the \$50.00 difference between the monthly rent agreed to by the subject tenants (\$1,250.00) and the new renters (\$1,200.00), which is limited to the 3 months of February, March and April 2012 in the total amount of \$150.00 (3 x \$50.00). The total entitlement established by the landlords in this aspect of the application is therefore **\$3,900.00*** (\$3,750.00 + \$150.00).

\$176.15: unpaid utilities (water). I note that the landlords' 10 day notice to end tenancy does not specify any amount outstanding for utilities. Additionally, there is conflicting testimony from the parties in regard to the status of the utilities bill at the end of tenancy for the renters living in the unit prior to the time when the subject tenancy commenced. The status of the utilities bill is further complicated consideration of an amount for which the landlords are responsible which arises out of their responsibility to fill the pool with

water. In short, I find that there is insufficient conclusive evidence to support this aspect of the claim and it is, therefore, hereby dismissed.

\$2,694.29: miscellaneous expenses including, but not limited to, advertising for new renters, airfares, hydro for the period of time immediately following the tenants' departure from the unit, cleaning & rubbish disposal, repairs to damage, vehicle gas, food for volunteers, secondary fridge and stand up freezer, mailing costs, and replacement of various missing items. Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. These include mailing costs and the cost of developing photos, for example. Accordingly, a range of items included in this aspect of the application are hereby dismissed.

A range of other expenses claimed fall within the realm of the "cost of doing business" and are therefore not recoverable under the Act. Additionally, as noted elsewhere in this decision, there is an absence of the comparative results of move-in and move-out condition inspection reports. As well, not all components of this aspect of the claim are accompanied by receipts which demonstrate that actual costs were incurred.

In summary, this aspect of the application is hereby dismissed with the exception of costs claimed for advertising in the total amount of **\$38.80*** (\$25.92 + \$12.88).

Total entitlement: **\$3,938.80** (\$3,900.00 + \$38.80).

I order that the landlords retain the security deposit of **\$500.00**, with the result that the landlords' net entitlement is **\$3,438.80** (\$3,938.80 - \$500.00).

TENANTS' CLAIM

\$5,400.00: ongoing stress and health risks (\$900.00 / month x 6 months from May to October 2011). I find on a balance of probabilities that there is insufficient evidence to support the tenants' claim for a breach of the right to quiet enjoyment. Accordingly, this aspect of the tenants' claim is hereby dismissed.

Further, however, the tenants claim that there was a "rotting decay smell in the kitchen" and the landlords acknowledge that there was an "ongoing issue" with an "odour" in the bathroom. While I find that there is limited evidence to support a claim that the state of the unit was such that, strictly speaking, it failed to comply with the "health, safety and housing standards required by law," I find on a balance of probabilities that the tenants

have established entitlement limited to **\$300.00***, calculated on the basis of \$50.00 per month for each of the 6 months in question (6 x \$50.00)

\$1,200.00: *cleaning inside of trailer (\$20.00 / hour X 60 hours.)* In the absence of a move-in condition inspection report and a log setting out the times and dates when cleaning is said to have been undertaken, and in the absence of evidence showing communication between the parties associated with a need for such extensive cleaning to be completed, I find on a balance of probabilities that there is insufficient evidence to support this aspect of the claim and it is, therefore, hereby dismissed.

\$130.00: *total of various receipts for repairs & cleaning.* In the absence of a move-in condition inspection report and any receipts before me in evidence, this aspect of the application is hereby dismissed.

\$840.00: *cleaning exterior of trailer (\$20.00 / hour x 42 hours.)* In the absence of a move-in condition inspection report and a log setting out the times and dates when cleaning is said to have been undertaken, and in the absence of evidence showing communication between the parties associated with a need for such extensive cleaning to be completed, I find on a balance of probabilities that there is insufficient evidence to support this aspect of the claim and it is, therefore, hereby dismissed.

\$600.00: *miscellaneous cleaning & labour (\$20.00 / hour x 10 hours x 3 months of July, August & September 2011).* As previously stated above, in the absence of a move-in condition inspection report and a log setting out the times and dates when cleaning is said to have been undertaken and so on, I find on a balance of probabilities that there is insufficient evidence to support this aspect of the claim. Accordingly, it is hereby dismissed.

\$1,800.00: *pool unavailable (\$300.00 x 6 months from May to November 2011).* While the landlord does not dispute this aspect of the tenants' application in principle, she objects to the quantum claimed. I find that the tenants' use of the pool in the month of November is unlikely; further, the tenants vacated the unit around mid month. On a balance of probabilities I find that the tenants have established entitlement limited to **\$900.00***, calculated on the basis of \$150.00 per month for the 6 month period in question (\$150.00 x 6).

\$225.00*: *dishwasher unavailable (\$25.00 for July, \$50.00 x 4 months from August to November 2011).* Again, while the landlord does not dispute this aspect of the claim in principle, she objects to the quantum sought by the tenants. However, I find that the

amount sought by the tenants is not unreasonable under the circumstances, and I therefore find that the tenants have established entitlement to the full amount claimed.

\$150.00: *postal service reimbursement*. In the absence of any receipts or otherwise conclusive documentary evidence to support this aspect of the claim, it is hereby dismissed.

Total entitlement: **\$1,425.00** (\$300.00 + \$900.00 + \$225.00)

Offsetting the claims, I find that the landlords have established entitlement to a monetary order in the amount of **\$2,013.80** (\$3,438.80 - \$1,425.00)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$2,013.80**. Should it be necessary, this Order may be served on the tenants, filed in the Small Claims Court 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: January 25, 2012.

Residential Tenancy Branch