



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenant's security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on November 8, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by personal delivery by the tenant's Agent I.L. on January 9, 2012 in accordance with section 89 of the Act.

The Tenant and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Are the Landlords entitled to unpaid rent and if so how much?
7. Are the Landlords entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of the security deposit?

Background and Evidence

This tenancy started on July 1, 2011 as a fixed term tenancy for 1 year with an expiry date of June 30, 2012. Rent was \$1,500.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$750.00 on June 5, 2011.

The Landlord said the Tenant moved out of the rental unit on October 23, 2011 as a result of damage caused by an overflowing toilet. The Landlord said the Tenant agreed to pay the rent until February, 2012 and then the Tenant was going to move out of the country for family reasons. The Landlord said the Tenant's mother caused the toilet to overflow because she put too much paper in the toilet. The Landlord submitted a plumber's bill for \$95.20 that indicated the toilet was clogged by toilet paper. As a result of the overflowing toilet incident the rental unit needed extensive repairs and the repair company asked the Tenant to temporarily move out of the rental unit by way of email dated October 20, 2011. The Landlord confirmed this information in an email from the Landlord to the Tenant on October 22, 2011. In that email the Landlord asks the Tenant to vacate the building temporarily as per the restoration company's request to gain

Residential Tenancy Branch
Office of Housing and Construction Standards

access to the unit to remedy the problem. The Landlord continued to say the Tenant then moved out of the rental unit on October 23, 2011.

The Landlord continued to say the repairs are almost complete and their insurance company has accepted the claim and is paying the cost of repairing the rental unit. The Landlord said they had to pay the deductible of \$300.00 which they would like to get back from the tenant in this application. As well the Landlord said they had to pay the plumber cost of \$95.20 to unplug the toilet and there are some other bills that will be coming in, but they are not sure if they will have to pay them or if the insurance company will cover those costs.

The Landlord said they have not rented the unit out as work is still being done and they have applied for loss rent up to February, 2012 as that was the verbal agreement they had with the Tenant. This includes November, 2011 rent of \$1,500.00, December, 2011 rent of \$1,500.00 and January, 2012 rent of \$1,500.00 for a total of \$4,500.00 in loss rent. The Landlord said the tenancy agreement is until June 30, 2012, but they made a verbal agreement with the Tenant to end the tenancy in February, 2012 and that is what they have applied for.

The Tenant said the rental unit was unclean when she moved in and no move in or move out condition reports were completed for the tenancy. As well the Tenant said that after the toilet overflowed she believed the Landlords told her she had to move out of the rental unit and the tenancy was over. The Tenant did agree her mother caused the toilet to overflow by putting too much paper in the toilet.

Consequently because she had to move out of the rental unit the Tenant said she has applied for double her security deposit in the amount of \$1,500.00 as she has not received the security deposit back as of yet, \$1,500.00 because the Landlord did not give her correct Notice to End Tenancy, \$592.00 for the returned of rent for October 23, 2011 to October 31, 2011 and \$1,500.00 for loss of quiet enjoyment of the rental unit from October 14, 2011 (when the toilet overflowed) to October 23, 2011 when the Tenant moved out, because of the disturbance caused by the workmen repairing the rental unit.

In the Tenants closing remarks she insisted that she gave the Landlord her forwarding address by email and by hard copy on October 23, 2011, but she said the hard copy was not in the evidence package.

The Landlords said in their closing remarks that the insurance company has covered most of the cost in repairing the unit, but they would like to recover their deductible of \$300.00, the plumber bill at \$95.20, their unpaid rent for November, December and

Residential Tenancy Branch
Office of Housing and Construction Standards

January in the amount of \$4,500.00, which the Landlord said was agreed to by the Tenant and the filing fee of \$100.00 for this proceeding.

The Tenant was asked if she agreed to the tenancy ending in February 2012 and the Tenant said she had agreed to that.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenants did not give the Landlords proper notice to end the tenancy and the Tenants do not have the right under the Act to withhold part or all of the rent. As well the Landlords and the Tenant had a verbal agreement to end the tenancy in February, 2012 which constitutes an agreement to end the tenancy before the end of tenancy in the tenancy agreement of June 30, 2012. Consequently, I find the Tenant is responsible for the rent of \$1,500.00 for the months of November, 2011, December, 2011 and January, 2012 in the amount of \$4,500.00.

As well, as the Landlords' provide proof of loss of \$95.20 for the plumber's bill and they said the insurance company is not paying this bill therefore I find for the Landlord and award them to costs of the plumber to repair the toilet on October 14, 2011.

Further the Landlord gave affirmed testimony that the deductible was \$300.00, but did not provide any proof of loss by way of an insurance policy or receipt therefore; I dismiss the Landlords' claim for \$300.00 for the cost of the deductible on the insurance policy.

With regard to the Tenant application for double the security deposit in the amount of \$1,500.00 I find the Landlord made their application within the 15 days allowed under the Act, for a claim for unpaid rent against the Tenants security deposit. Consequently I dismiss the Tenant's claim for double the security deposit for \$1,500.00 without leave to reapply.

Residential Tenancy Branch
Office of Housing and Construction Standards

Further I find the Tenant is the one who chose to end the tenancy on October 23, 2011 in violation of the tenancy agreement and the verbal agreement with the Landlord for an early end to the tenancy in February, 2012; therefore I dismiss both the Tenant's monetary claims for return of rent of \$592.00 and for one month's rent of \$1,500 for and incorrect Notice to End Tenancy from the Landlord. The Tenant has not established grounds for either of these claims as she was the party that ended the tenancy.

The Tenant has also claimed that the workmen disturbed her quiet enjoyment of the rental unit and as a result she has applied for \$1,500.00 as compensation for that disturbance. As the Tenant caused the damage and the resulting work in the rental unit; I find she has not established grounds that entitle the Tenant to compensation for disturbances that the Tenant caused herself. The Tenant's claim for loss of quiet enjoyment is dismissed without leave to reapply.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing as following:

	Loss rent:	\$ 4,500.00
	Plumber bill	\$ 95.20
	Recover filing fee	\$ 100.00
	Subtotal:	\$ 4,695.20
Less:	Security Deposit	\$ 750.00
	Subtotal:	\$ 750.00
	Balance Owing	\$ 3,945.20

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$100.00 cost of the filing fee for her application that she has already paid.

.



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Office of Housing and Construction Standards

Conclusion

A Monetary Order in the amount of \$3,945.20 has been issued to the Landlords. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant's application is 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*.

Residential Tenancy Branch