



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for money owed or compensation for damage or loss and for unpaid rent, and authority to retain the tenant's security deposit and to recover the filing fee for the Application.

The hearing process was explained to the parties. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order, authority to retain the tenants' security deposit, and to recover the filing fee for the Application?

Background and Evidence

This month to month tenancy began on April 1, 2011, ended on November 30, 2011, monthly rent was \$1,100.00 and the tenants paid a security deposit of \$550.00 on or about April 1, 2011.

The rental unit is in the basement suite, with the landlord's home being on the main floor.

The landlord's monetary claim is in the amount of \$1,100.00 for loss of rent revenue for December 2011.

The landlord submitted that the tenants gave insufficient notice to end the month to month tenancy, more particularly, the tenants informed the landlord on November 2, 2011, that they wanted to end the tenancy on December 1, 2011.

Thereafter the landlord informed the tenants that this notice was not sufficient as it was not one clear month's notice and that she expected the tenants to stay until the end of December 2011.

The parties then discussed and agreed that the tenants would end their tenancy on or before January 1, 2012. To that end, on November 7, 2011, the landlord advertised the rental unit for re-rent, effective January 1, 2012.

The landlord submitted that on November 10, she received a phone call from one of the tenants, who informed her that her daughter (landlord's) had been caught by the other tenant in the rental unit.

The landlord attended the rental unit that night and confirmed that her daughter had been in the rental unit and had taken some of the tenants' possessions. The tenants informed the landlord that they had noticed the missing items on November 8.

The landlord informed the tenants that night, on Thursday, November 10, 2011, that she would buy a deadbolt lock that weekend for the door leading from the rental unit to the landlords' home, for the tenants' peace of mind.

The landlord stated that she received the tenants' notice, on November 15, 2011, of their intent to vacate the rental unit by December 1, 2011. The notice declared that the landlord had breached a material term of the tenancy agreement.

The landlord requested a more specific reason, which was then delivered to her by the tenants on November 16, 2011.

The landlord's evidence and testimony show that the landlord purchased a new lock for the door in question on November 17 and informed the tenants of such on November 19, 2011. The landlord informed the tenants that she would install the lock on November 23, 2011, unless they agreed to an earlier entry time.

The landlord submitted that the lock she purchased did not fit, which caused the landlord to return the item the next day.

When asked, the landlord explained that the door in question, which connects their, the landlord's, home to the rental unit locks only on the landlord's side of the door. The landlord confirmed that the tenants have never had a way to lock the door from their side and that entry from the landlords' side to the tenants' side remained unfettered during the tenancy.

The tenants, in response, stated that they had agreed with the landlord to stay until the end of December 2011, until they caught the landlords' 13 year old daughter in their home, with confirmation that the daughter had stolen some personal possessions.

The tenants submitted that the landlord did not attempt to change the locks until November 23, 2011. The tenants submitted that the delay in changing the locks caused them to submit their notice, on November 15, 2011, that the tenancy was ending on December 1, 2011.

The tenants submitted that they were never comfortable in their home after discovering that they had no way of locking the door leading to the landlord's home.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

I accept that the tenants ended their tenancy early by vacating the rental unit as of November 30, 2011, in violation of Section 45 of the Act. The tenants were required to end this tenancy by providing the landlord with 30 days written notice unless the tenants could show that the landlord had breached a material term of the tenancy agreement and had not corrected the problem within a reasonable timeframe pursuant to section 45(3) of the *Act*.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and exclusive possession of the rental unit.

Policy Guideline #6 dealing with loss of quiet enjoyment includes the following:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promise(s) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

Every tenancy agreement contains an implied covenant of quiet enjoyment.

The tenants argued that they were entitled to end this tenancy early due to the landlord's failure to address the change of locks in a timely manner, which was a failure by the landlord to reasonably protect their right to quiet enjoyment of their rental.

I accept the tenants' arguments. The landlord's own evidence and testimony show that after being notified of her daughter's entry into the rental unit and theft of the tenant's personal possessions and promise to buy a lock for the door within two to three days, the landlord failed to purchase the lock for one full week and did not notify the tenants that a lock had been purchased until nine days after the incident. Further, the landlord's own admission and evidence show that the landlord failed to purchase the lock until one day after the tenants had given a written notice of their intent to vacate, due to the landlords' alleged breach of a material term. I do not find this delay to be reasonable.

I find that the tenants were quite patient in waiting for five days for the landlord to provide them exclusive possession of their rental unit before issuing a written notice, effective at the end of November 2011.

With the landlord's delay of one week of purchasing a lock for the door and of nine days in informing the tenants of such a purchase, I am further troubled by the landlord's lack of understanding of the tenants' right to quiet enjoyment and exclusive possession of the rental unit under the Residential Tenancy Act, which entitles them to be free of the fear that someone from the landlord's home could enter their home at any time without their knowledge.

Due to the above, I find the landlords fundamentally breached the tenancy agreement and the Act. I find the only remedy was to end the tenancy.

Under sections 62 and 44(1)(f) of the Act, I order the tenancy ended effective November 30, 2011, the date given by the landlords to the tenants on a written notice that the tenancy was over.

As I have found that the tenancy ended on November 30, 2011, by the landlords' own actions, I find the landlords are not entitled to loss of rent revenue for December, 2011, and I therefore **dismiss** their monetary claim for \$1,100.00.

As I have dismissed the landlords' application, I decline to award them recovery of the filing fee.

As I have dismissed the landlords' application, pursuant to sections 65 and 67 of the Act, I find that the tenants are entitled to a return of their security deposit, in the amount of \$550.00.

I am enclosing a monetary order for **\$550.00** with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlords fail to comply with this monetary order.

Conclusion

The landlords' application is dismissed, without leave to reapply.

The tenants are granted a monetary order in the amount of \$550.00

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: February 27, 2012.

Residential Tenancy Branch