



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the unit, unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution. The landlord named tenants P.P and S. T. only.

The three tenant applicants applied requesting compensation for damage and loss under the Act and return of the deposit paid.

Both parties were present at the hearing and confirmed receipt of the other's Application. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. The tenants submitted a copy of 10 Day Notice ending tenancy, as their only written evidence. I have considered all of the evidence and testimony provided.

Preliminary Matter

The tenant's application indicated a request for service of documents in a different way than required by the Act; however, no submission was made requesting any such Order.

The photographs submitted by the landlord were not considered as they were received as late evidence and not served to the respondents.

The landlord's application indicated a claim in the sum of \$1,300.00 however; the application did not supply a detailed breakdown. The landlord submitted a list of costs, which did not match the amounts or items included on the application. Therefore, I have considered the costs that were claimed in the details of the dispute section of the applicant.

Issue(s) to be Decided

Are the tenant's entitled to return of the \$450.00 deposit?

Are the tenants entitled to compensation for damage or loss in the sum of \$3,650.00?

Is the landlord entitled to compensation for damage or loss in the sum of \$276.00?

Is the landlord entitled to unpaid December, 2011, rent in the sum of \$900.00?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on April 1, 2011; rent was \$900.00 per month, due on the first day of each month. A deposit in the sum of \$450.00 was paid. A copy of the move-in condition inspection report was supplied as evidence.

The parties agreed that on November 30, 2011, the tenants gave the landlord a written Notice ending their tenancy that day. The landlord was unable to contact the tenants as he had been given a no contact Order by the police. A move-out condition inspection report was not arranged. The landlord applied claiming against the deposit, within 15 days of the end of the tenancy.

The tenants have made the following claim:

Return of security deposit	450.00
Moving cost and cleaning	400.00
Fuel costs	100.00
Rent at new unit	1,350.00
TOTAL	4,100.00

The landlord has made the following claim:

December 2011 rent	900.00
Bailiff service	60.00
TOTAL	1176.00

The parties agreed that on November 30, 2011, the landlord came to the rental unit to retrieve a computer that his wife had lent to one of the tenants; who is her sister. The parties disagreed as to what occurred; the tenants alleged the landlord was abusive and threatening; the landlord denied this and alleged that tenant S.T. acted aggressively. The police were called and the landlord was held in custody for a short period of time and then released. The landlord supplied evidence from crown counsel that charges are not approved.

The landlord has requested payment of December, 2011, rent. The tenants did not give proper Notice and new occupants were not obtained until February 15, 2012.

The landlord supplied a copy of a cleaning invoice for 18 hours, at \$12.00 per hour. The cleaner was paid out of petty cash. The landlord stated that the tenants did not clean the unit. The invoice indicated that the walls were smoky and dirty, the windows were not cleaned, the blinds were dirty, lights were not cleaned, the laundry and 2 bedrooms required cleaning and that the kitchen and living room required cleaning.

The tenants stated that they hired people to go to the unit to clean and they would not have left the unit in poor condition.

The landlord supplied a copy of a locksmith receipt, but this amount was not included in the details of the dispute section of the application.

The landlord supplied a copy of a bailiff invoice. The landlord had a no contact order with the tenants, so the bailiff was hired to complete service of the landlord's documents.

The landlord had given the tenants a 10 Day Notice ending Tenancy for Unpaid Rent issued on November 29, 2011; however the amount owed was not rent but a pet deposit. The tenants testified that they did not vacate the unit as a result of the Notice, but as the result of being afraid of the landlord.

The tenants testified that they were essentially forced to leave as a result of the behaviour of the landlord. They felt afraid of the landlord, as he had acted aggressively with S.T. One of the tenants had stepped between the landlord and S.T., as she was afraid the landlord would assault S.T.

The tenants believe the landlord should pay moving costs, the cost of the cleaners, fuel and the first month's rent at their new rental unit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45(1) of the Act provides:

45 (1) *A tenant may end a periodic 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, and

(b) 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.

There is agreement that some sort of altercation occurred between the landlord and the tenants; however, the tenants had the option of seeking a remedy by submitting an application for dispute resolution vs. suddenly ending their tenancy. There was no evidence before me that this was more than a one-time conflict with no previous incidents having occurred to cause the tenant's concern. Therefore, I find that the notice given by the tenants failed to comply with the Act and would have been sufficient for an end of tenancy effective December 31, 2011.

As the tenants failed to give proper Notice ending the tenancy, I find that the landlord is entitled to compensation for unpaid December, 2011, rent in the sum of \$900.00.

I find, based on the detailed invoice supplied by the landlord, that the unit did require cleaning. The amount of cleaning recorded on the invoice indicated that the unit could not have been left in a reasonably clean state. The tenants provided no evidence of the cleaners they claim to have hired. Therefore, I find that the landlord is entitled to compensation for cleaning in the sum of \$216.00.

There was no evidence before me that the landlord was required to use the service of a bailiff. The landlord works as agent for a company who could certainly have used a different agent to serve the tenants. Further, the landlord had the address for the tenants and could have chosen to send the documents by registered mail. Therefore, the claim for bailiff costs is dismissed.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Cleaning	216.00	216.00
Bailiff service	60.00	0
TOTAL	1176.00	1116.00

In relation to the tenants claim, I find that the tenants have failed to provide any evidence that the altercation which occurred at the end of November, 2011, was sufficient to allow them to give improper notice ending the tenancy. The tenants were free to leave the unit and to apply for compensation as the result of a loss of quiet enjoyment, but instead they quickly vacated and did nothing to minimize the claim they are making. The tenants did not request any Order or take any steps to resolve problems they might have had with the landlord and chose to end the tenancy, in breach of the Act.

Further, the tenants have provided no verification of the claim they have made such as receipts, invoices or proof of rent paid elsewhere.

I have accepted that there was an altercation of some sort between the tenants and landlord; but I have determined that this event failed to support the reasons for the tenants having vacated and their claim for compensation. Therefore, I find that the tenant's application is dismissed.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit plus interest, in the amount of \$450.00, in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,166.00, which is comprised of unpaid December, 2011, rent; damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$450.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$716.00. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the landlord's claim is dismissed.

The tenant's application is dismissed.

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 16, 2012.

Residential Tenancy Branch