



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNDC, MNSD, FF
	Landlord MNR, MNSD, FF

Introduction

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

The Landlord filed seeking a monetary order 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 Landlord to the Tenant were done by registered mail on January 14, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on February 10, 2012 in accordance with section 89 of the Act.

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

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is the Landlord 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 April 1, 2011 as a fixed term tenancy for 6 months and renewed as a month to month tenancy. Rent was \$875.00 per month payable on the 1st day of each month. The Tenant paid a security deposit in two payments with the full deposit being paid of \$437.50 on April 1, 2011.

The Tenant said he moved out of the rental unit on January 1, 2012, as a result of damage caused by leaking water from the unit above his rental unit. The Tenant said the flooding caused damage to the ceiling and carpets of his rental unit and the Tenant provide photographs to show the extent of the damage to the ceiling and the carpet. The Tenant continued to say the Landlord inspected the damage on December 10, 2011 and on December 13, 2011 and on December 20, 2011 the Landlord sent the maintenance man to paint the ceiling, but nothing was done to the carpets. The Tenant provided a witness A.M. senior that said he did the December 13, 2011 inspection with the Property Manager and the Maintenance Man and their discussion was to fix the ceiling and the carpets. The Witness A.M. senior said the carpets were wet and there was a strong odour in the rental unit, which the property Manager and Maintenance Man acknowledged.

The Tenant continued to say that the carpets were not cleaned the strong odour continued in unit. The Tenant said he thought it was mould and he believed it was causing both him and his father health issues. As a result the Tenant said he wrote the Landlord a letter dated December 24, 2011 giving his Notice to end the tenancy January 1, 2012 because he believed the rental unit was not habitable.

After the Tenant left the unit he said he tried to make arrangements with the Landlord to settle the dispute through his lawyer by allowing the Landlord to retain his security deposit as full settlement of any claims the Landlord had. The Tenant said the Landlord did not accept his offer.

The Tenant also said he is claiming his moving costs of \$500.00, because he had to move in an emergency situation. The Tenant did not provide any receipts or evidence supporting the moving costs claim of \$500.00.

The Landlord said the Tenant moved out of the rental unit January 1, 2012, without giving proper notice to end the tenancy. The Landlord said the Tenant gave written notice to end the tenancy on December 24, 2011 and moved out January 1, 2012. Landlord continued to say this is not proper notice and as a result the Landlord is claiming the rent for January, 2012 of \$875.00. As well the Landlord said they are requesting to retain the Tenant's security deposit of \$437.50 as partial payment of the unpaid January, 2012 rent.

The Landlord continued to say that they responded to the Tenant's request for emergency repairs on December 10, 2011 the same day of the request and did a follow up inspection on December 13, 2011 with the Tenant's father in attendance. The Landlord provided a witness J.E. who testified that the ceiling was stained, but the carpet was dry and that there was no odour in the rental unit. As a result the only repair the Landlord did to the unit was to paint the ceiling. The Witness J.E. said he inspected the carpet and determined no cleaning or repairs were required for the carpet. As a result the Landlord said the Tenant's early move out was not justified and the Tenant should be responsible for the January, 2012 rent.

The Tenant said the rental unit was uninhabitable because of the strong odour and the health issues resulting from issues with the carpet from the flood. The Tenant continued to say he cleaned the unit before moving out and there was no damage caused to the unit by him. As a result the Tenant said he is requesting his damage deposit to be returned and he is claiming moving expenses of \$500.00 because he had to move in an emergency situation because the Landlord did not correct the damage to the carpet.

Analysis

There was much contradictory testimony given during the hearing. The Landlord and the Landlord's witness said they responded to the Tenant's request for emergency repairs in a timely manner. The Tenant's request was made on December 10, 2011 and the Landlord inspected the flood damage on December 10 and December 13, 2011 and the ceiling was painted on December 20, 2011. The Landlord and the Landlord's witness said there was no damage to the carpet and as a result nothing was done to the carpet. The Tenant and the Tenant's witness said the Landlord did not repair the damage done to the carpet and as a result the rental unit had a strong odour and the Tenant had health issues which they believe were caused by mould in the carpet as a result of the carpets not being cleaned or replaced.

Section 32 (1) (a) says a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and (1) (b) says having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have reviewed the evidence and testimony provided by both parties. The Tenant has provided photographs which show extensive damage to the ceiling from the water leaking from the unit above them therefore on the balance of probabilities it is reasonable to deduce that there was substantial water leakage on the carpets of the Tenant's rental unit. The Tenant did provide photographs of the carpet damage as well. Consequently I find the Landlord did not take preventative measures to correct further problems with the wet carpets as in cleaning the carpets or drying the carpets with fans; therefore I find the Tenant has established grounds support his letter to end the tenancy early dated December 24, 2011. As a result I dismiss the Landlord's application for unpaid rent of \$875.00 for January, 2012 and to retain the Tenant's security deposit of \$437.50 as the Tenant was justified in ending the tenancy early due to inadequate emergency repairs done by the Landlord regarding the water damage in the unit, which made the unit uninhabitable.

Further as both the Landlord and the Tenant said the Tenant did not damage the unit and the Landlord's application did not apply for the Tenant's security deposit for any damages to the unit I find the Tenant has established grounds to be successful for the return of his security deposit of \$437.50. I order the Landlord to return the Tenant's security deposit of \$437.50 forth with.

Further as the Tenant chose to move out of the unit early, moving expenses are a normal cost of moving at the end of a tenancy and the Tenant did not provide receipts to prove a loss actually existed, I find the Tenant has not established grounds for his claim



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of \$500.00 for moving expenses. Consequently, I dismiss without leave to reapply the Tenants claim for moving expenses of \$500.00.

As the Tenant has been partially successful in this matter, he is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing as following:

Security Deposit	\$ 437.50	
Filing Fee	\$ 50.00	
Balance Owing		\$ 487.50

As the Landlord was unsuccessful in this matter I order the Landlord to bear the \$50.00 cost of the filing fee for her application that she has already paid.

Conclusion

A Monetary Order in the amount of \$487.50 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Landlord'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