



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damages and unpaid rent and utilities; for compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The parties disagreed with respect to the method of service of the Notice of Hearing documents. The Landlords testified that the documents were personally served upon the Tenants, and the Tenants' agent testified that the documents were received on March 13, 2012, in the mail. The Tenants provided documents in evidence and were represented at the teleconference by their daughter, and therefore I am satisfied that the Notice of Hearing documents were sufficiently served on March 13, 2012, pursuant to the provisions of Section 71(2)(b) of the Act.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?
- If so, may the Landlords apply any or all of the security deposit towards their monetary award?

Background and Evidence

The parties agreed on the following facts:

- This tenancy started on September 27, 2011.
- The rental unit is one of three suites in the rental property.
- Monthly rent was \$1,700.00, due on the first day of each month. The Tenants were responsible for paying 50% of the utilities.
- The Tenants paid a security deposit in the amount of \$850.00 on September 1, 2011.

The Landlords gave the following testimony:

The Landlords testified that the Tenants gave them a letter dated December 27, 2011, saying that they were moving out of the rental unit as soon as possible because they did not feel safe in the rental unit. The Landlords testified that the letter indicated that other occupants in the building were threatening the Tenants with bodily harm. The Landlords stated that they were surprised at the letter's contents and that the letter was unexpected. The Landlords provided a copy of the Tenants' letter in evidence, along with a letter that they wrote in reply dated December 31, 2011.

The Landlords submitted that the Tenant's letter dated December 27, 2012, did not provide due notice to end the tenancy. The Landlords testified that they do not know what day the Tenants moved, but that they were out of the rental unit on December 31, 2011, when the Landlords checked. The Landlords seek a monetary award for **\$1,700.00** representing unpaid rent for the month of January, 2012.

The Landlords also seek **\$659.48** in unpaid utilities, and provided copies of utility bills in support of their claim.

The Landlords testified that they had the carpets professionally cleaned after the Tenants moved out, and seek to recover that cost in the amount of **\$200.00**.

The Landlords alleged that the Tenants damaged the dryer in the rental unit. They stated that they did not know for certain how old the dryer was because it was there when they bought the rental property 4 or 5 years ago, but that it was in good working order at the beginning of the tenancy and did not work after the Tenants moved out. The Landlords seek **\$300.00** for a new dryer.

The Landlords stated that the toilet was plugged at the end of the tenancy and that they paid **\$100.00** for a plumber to unblock it. The Landlords seek to recover this amount from the Tenants.

The Landlords testified that the Tenants did not return the keys or the garage remote control to the rental unit. The Landlords seek **\$200.00** for replacing the front door lock and **\$100.00** for replacing the garage remote control.

The Tenants' agent gave the following testimony:

The Tenants' agent stated that the Tenants had to move out of the rental unit for their own safety. She testified that the occupants in one of the other suites in the rental property (the "other occupants") were violent, using drugs and had weapons at the

rental property. She stated that the other occupants made threats to physically harm the Tenants.

The Tenants' agent testified that the police were called to the rental property on December 2, 3, 4, 6, 7, 9, 10, 12, 14, 16, 17, 20, 23 and 24. The Tenants' agent stated that there were nights during December when the Tenants did not stay at the rental unit for fear of their personal safety. She testified that the male Tenant called the Landlords several times about these incidents and gave them the RCMP contact number, but the RCMP member told her that the Landlords had never called about the other occupants. She testified that since the Landlords did not do anything to protect the Tenants, they felt they had to move out of the rental unit at the end of December and wrote to the Landlords advising that they would be doing so. The Tenants provided a written statement from the person who lives in the third suite ("FM") along with the RCMP member's business card and file number.

The Tenants' agent stated that the Tenants had not seen the Landlord's letter dated December 31, 2011, until they received copies of the Landlords' evidence.

The Tenants' agent agreed that utilities were owed, but testified that the Tenants were not presented with any utility bills until they received the Landlords' evidence package. She stated that the Tenants agree that they owe some money for utilities but do not agree with the Landlords' calculations. The Tenants' agent stated that the bills provided by the Landlords include utilities used during a period of time that pre-dated the tenancy and therefore the Tenants submit that they owe only a portion of the amounts claimed by the Landlords.

The Tenants' agent stated that the dryer did not work properly when the Tenants moved into the rental unit and that it was at least 10 years old. She submitted that the Tenants did not smoke or have a pet and therefore the Landlord was not entitled to recover the cost of shampooing the carpets because the Tenants only lived in the rental unit for 3 months. The Tenants' agent did not agree that the Tenants blocked the toilet.

The Tenants' agent testified that she went to the Landlords' house to return the keys to the rental unit at 6:00 p.m. on December 31, 2011, but no one was home so she left the keys in an envelope in their mail box. She stated that the male Tenant called the Landlords and confirmed that they received the keys. The Tenants' agent also submitted that the locks have not been changed, and provided a photograph of the door to the rental unit in evidence.

The Tenants' agent stated that the Tenants forgot to return the remote control for the garage and made an arrangement with the Landlords that they could give it to FP. The Tenants provided a written statement from FP in evidence.

The Landlords gave the following reply:

The Landlords testified that the police had only been at the rental property twice in December. They testified that when the police came, the other occupants were causing a disturbance but they did not find any drugs on the rental property. The Landlords testified that they spoke to the other occupants and that the other occupants moved out of the rental property at the end of December, 2011.

The Landlords denied receiving the keys to the rental unit and testified that FP did not return the garage remote control to the Landlords.

An attempt was made to reach FP in order for him to give oral testimony, but he did not sign into the conference before it ended.

Analysis

Section 67 of the Act states:

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding the Landlords' claim for January rent:

Section 44 of the Act sets out the **only** ways a tenancy can end, including a notice to end the tenancy issued by a tenant under Section 45 of the Act. Section 45(3) of the Act states:

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, the Tenants allege that the Landlords failed to provide them with quiet enjoyment of the rental unit. In order for the Tenants' notice to end the tenancy to be effective, the Tenants must provide the Landlord with written notice and if the Landlords

fail to correct the situation within a reasonable period of time, then the Tenants may end the tenancy without having to give a full month's notice as required under Section 45(1) of the Act.

I find that the Tenants did not provide the Landlords with a reasonable period of time to address the problems identified in the Tenants' letter dated December 27, 2011, and that therefore the Tenants' letter is not a valid notice to end the tenancy under Section 45(3) of the Act. I find that the Landlords suffered a loss (January's rent) resulting from the Tenants failure to comply with Section 45 of the Act, and that the Landlords are entitled to a monetary award in the amount of **\$1,700.00**.

Regarding the Landlords' claim for unpaid utilities:

The Tenants agree that they are responsible for only some of the utilities that the Landlords claim. I accept the Tenants' testimony that the utility bills provided in evidence include charges for periods of time before the tenancy existed. I find that the Tenants owe the Landlords a total of **\$341.47** in unpaid utilities from September 27 to December 7, 2011, calculated as follows:

Bill	Period	Amount owing	Tenants' share
Gas	Oct 7 – Nov 8	\$169.91	$\$169.91 / 2 = \84.95
Gas	Sep 8 – Oct 7	\$75.82 (prorated for Sep 27 – Oct 7 @ 50%)	$(\$75.82 \times 11 \text{ days} / 30 \text{ days}) / 2 = \13.90
Electricity	Oct 8 – Dec 7	\$267.00	$\$267.00 / 2 = \133.50
Electricity	Aug 8 – Oct 7	\$113.24 (prorated for Sep 27 – Oct 7 @ 50%)	$(\$113.24 \times 11 \text{ days} / 30 \text{ days}) / 2 = \20.76
TOTAL			\$341.47

The remainder of the Landlords' claim:

This is the Landlords' claim and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,

2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords provided insufficient evidence to prove their claim for the cost of carpet cleaning. The Landlords did not provide sufficient evidence that the carpets required professional cleaning at the end of the three month tenancy. In addition, the Landlords did not provide a copy of the receipt for the carpet cleaning and therefore did not establish the amount claimed. This portion of their claim is dismissed.

I find that the Landlords provided insufficient evidence to prove their claim for the cost of new dryer. The Landlords did not provide sufficient evidence that the Tenants damaged the dryer. For example, there were no Condition Inspection Reports provided for the beginning or the end of the tenancy that would establish the state of the dryer at the beginning and the end of the tenancy. In addition, the Landlords did not provide a copy of the receipt for the new dryer and therefore did not establish the amount claimed. This portion of their claim is dismissed.

I find that the Landlords have not provided sufficient evidence that the Tenants damaged the toilet, or sufficient evidence of the cost to repair the toilet and this portion of their claim is also dismissed.

The Landlords did not provide receipts for the cost of replacing locks or the garage door opener and therefore have not satisfied part 3 of the test above. Having found that the Landlords have failed to establish this portion of their claim, I make no finding with respect to whether or not these items were returned to the Landlords at the end of the tenancy.

The Landlords' application had merit and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary award. No interest has accrued on the security deposit.

The Landlords are hereby provided a Monetary Order, calculated as follows:

January, 2012 rent	\$1,700.00
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Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$2,091.47
Less security deposit	<u>- \$850.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$1,241.47

Conclusion

I hereby provide the Landlords a Monetary Order in the amount of **\$1,241.47** against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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: March 27, 2012.

Residential Tenancy Branch