



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNDC and FF

Introduction

This hearing was convened on the landlord's application for monetary compensation for unpaid rent on the claim that the tenants left the tenancy without proper notice, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding, damage to the rental unit and authorization to retain the security deposit in set off against the balance.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to a monetary award for the claims submitted and authorization to retain all or part of the security deposit in set off.

Claims in damages require that several factors be taken into account: comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on December 1, 2011. No written agreement was submitted into evidence but the parties concurred that rent was \$1,250 per month and the landlord holds a security deposit of \$625 paid at the beginning of the tenancy.

During the hearing, the landlord gave evidence that the male tenant had given notice by a telephone call on December 29, 2011 that the tenants would be vacating the rental unit by the end of January 2012. However, the tenants actually vacated on January 6, 2012.

As a result, the landlord submitted claims for the unpaid rent, damage and losses, on which I find as follows:

Unpaid rent for January 2012 - \$1,250. The parties concur that the rent for January was not paid and that the tenant gave verbal notice on December 29, 2011. The tenant stated that his family was unable to remain in the rental unit as a result of a sewerage blockage. The landlord said there had been a blockage on two occasions, but that they had been attended to expeditiously as soon as the tenant had informed them of the problem. A Roto-Rooter invoice dated December 17, 2011, indicates the blockage was due to an unidentified orange substance which the landlord suggests was introduced to the system by the tenants.

Section 26 of the *Act* provides that tenants must pay rent when it is due whether or not they believe the landlord to be in compliance with the legislation or rental agreement. Section 45 of the *Act* provides that tenants may give one month's notice to end a month to month tenancy but they must do so in writing and serve it on the landlord before the rent due date with an end of tenancy date at the end of the rental period (month). Section 45(3) will permit shorter notice if a landlord has not corrected a material breach of the rental agreement within a reasonable time of written advice of the breach.

In the present matter, I find no written and timely notification to end the tenancy and no written advice of a material breach that would justify short notice.

Therefore, the tenants are responsible for the January 2012 rent and this claim is allowed in full.

Damage for additional pets and clean up - \$625. The landlord gave evidence that the rental agreement allowed for one dog, but that she had learned on a visit to the unit that there were in fact five dogs and two families in the rental unit. The attending tenant stated that the additional pets and people were short term guests.

The landlord stated the pets had soiled a tile floor in the rental unit and base the amount claimed on what would have been charged for a pet damage deposit if she had known about the additional pets. She said one of the tiles was lifting, but no repairs had been made at the time of the hearing.

The tenant stated that the tiles were an inexpensive stick-on type and that the animal waste would not have penetrated the floor.

As I have no photographic evidence to corroborate the condition of the floor, no move-in/ move-out condition inspection reports to provide a reasonable comparison and no invoices to verify the cost to remedy the alleged damage, I dismiss this claim.

Utilities for while the rental unit was empty - \$500. The tenant did not deny that he was responsible for the utilities, but I must note that the landlord has submitted no utilities invoices to substantiate the amount claimed for a period which preceded the hearing by almost three months. While I appreciate that the rental unit is in a colder part of the province, I find that it was not necessary for the landlord to maintain the heat at a comfortable room temperature but simply warm enough to prevent freezing. In the absence of proof of the actual cost, I will allow the landlord the reduced amount of \$150.

Travel to care for the home while empty - \$500. There is no provision in the legislation that permits a landlord to be compensated for their travel expenses their rental unit. This claim is dismissed.

Unplug sewer - \$252. While I accept the evidence of the service provider who unblocked the sewer that the cause was a substance unknown to him, I cannot find that as proof that the tenants introduced it into the system. Therefore, this claim is dismissed.

Filing fee - \$50. As the application has succeeded on the major claim, I find that the landlord is entitled to recover the filing fee for this proceeding.

Security deposit – (\$625). The tenant stated that he had agreed that the landlord could retain the security deposit against January 2012 rent and I authorize that it be so under section 72 of the *Act*.

Thus, I find that, including recovery of the filing fee for this proceeding, and authorization to retain the security deposit in set off against the balance found to be owed, the tenants owe to the landlord an amount calculated as follows:

Unpaid rent for January 2012-	\$1,250.00
Filing fee	50.00
Sub total	\$1,450.00
Less retained security deposit (No interest due)	- 625.00
TOTAL	\$ 825.00

Conclusion

In addition to authorization to retain the tenants' security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order for \$825.00, enforceable through the Provincial Court of British Columbia, for service on the tenants.

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: April 25, 2012.

Residential Tenancy Branch