



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, MNSD, FF

Introduction

This was the hearing of applications by the landlord and by the tenant. The landlord applied for a monetary order and an order to retain the security deposit. The tenant applied for a monetary award and for the return of his deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and if so, in what amount?

Is the tenant entitled to the return of his security deposit including double the amount?

Is the landlord entitled to a monetary order and if so, in what amount?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The rental unit is a two bedroom bungalow in Port Coquitlam; the parties described it as a ranch house. The tenancy began August 15, 2011 for a fixed term ending February 29, 2012 and thereafter month to month, with rent in the amount of \$1,150.00 payable on the first day of each month. The tenant paid a security deposit of \$575.00 at the commencement of the tenancy. The tenant testified that he viewed the house twice before agreeing to rent it. He agreed to rent the house even though there were problems with the house, including a leaking roof and mould and moisture damage in the house. The tenant testified that after he agreed to rent the house and started to perform some repairs, he was unable to immediately move into the house due to the extent of the black mould, water damage and rodent problems.

It was acknowledged at the hearing that the landlord and the tenant agreed that the tenant would perform repairs to the rental unit and the landlord would pay for the materials. In mid September the tenant discovered that water leaked into the house whenever it rained. Because of the roof leak a tarp was placed over a portion of the roof. There were significant problems with the bathroom in the rental unit, including extensive mould, water damage and rats nesting inside the walls of the bathroom. The

tenant decided that he had to remove drywall and open some walls to deal with the problems. The tenant purchased supplies and performed work to the bathroom. He relocated a closet in the bedroom. The work included installation of laminate flooring and tiling in the bathroom, including the bathroom floor and the walls around the tub.

After the tenancy began the tenant requested the landlord's written agreement to reimburse him for the materials. He drafted an agreement for the landlord to sign. The draft agreement dated October 28, 2012 stated in part as follows:

The tenant (name) has agreed to purchase materials needed and perform the labour and work required for the following areas of the above mentioned premises.

- Purchase and install supplies needed for installing laminate flooring
- Purchase supplies to repair exterior wall in the second bedroom from wood rot
- Purchase supplies needed to repair interior drywall damaged from moisture and mould issues
- Purchase supplies needed for painting the interior rooms and walls
- Purchase supplies needed to repair and replace existing roof shingles and plywood
- Purchase supplies needed to tile the bathroom floors, walls (around tub), and back splash
- Purchase materials needed to cement laundry area

The landlord (name) has agreed to pay the tenant back for all the necessary materials and where applicable tools and supplies needed to properly repair and replace and install the materials for the above mentioned areas.

The draft agreement went on to record that the parties have agreed to a repayment by way of a rent reduction of \$550.00 per month until the total costs are paid in full such that the tenant would pay \$600.00 per month rent starting November 1st. According to the draft document, should either party choose to end the tenancy agreement before all monies had been paid back by way of rent deduction: "the landlord agrees to pay the tenant back within 30 days or another reasonable period agreeable to both parties." The tenant paid November rent in the amount of \$600.00. He testified that he moved out of the rental unit on December 9, 2011 because the landlord after many messages and voice messages left for the landlord, he ignored all of the tenant's attempts to have the agreement signed. The tenant said that he moved out because the landlord would not sign the agreement and it appeared that he had no intention of paying his costs for the repairs.

The tenant submitted copies of receipts for his expenditures totalling \$2,994.08, but in his amended application for dispute resolution filed on February 2, 2012 he claimed the following:

Monies owing for materials to repair:	\$1,852.45
Rent paid while not living at unit:	\$2,825.00
Double the security deposit:	\$1,150.00
Total:	\$5,827.45

The tenant sent a letter to the landlord dated January 4, 2012. He provided the landlord with his forwarding address and he said in the letter that he was enclosing receipts for the purchases made on materials and tools needed to repair and upgrade the property. He requested that the landlord pay him the sum of \$1,852.45, being \$2,402.45 expended less the \$550.00 rent reduction for November. He also requested payment of his security deposit for a total of \$2,427.45.

The landlord filed his application for dispute resolution on January 20, 2012. He claimed payment of the sum of \$3,385.00 consisting of unpaid rent for December and January, unpaid utilities of \$510.00 and \$575.00 for "damages to the unit". The landlord submitted a copy of a January 16, 2012 bill for natural gas in the amount of \$510.043. The bill covered a billing period from September 26th to December 23rd. The landlord submitted a copy of two faxed photographs which did not contain any useful images and had no probative value. The landlord claimed that the tenant did not give him a chance to sign the agreement before he moved out. The landlord said that the work done by the tenant was improperly performed and had to be redone. He claimed that the tenant damaged the rental unit by removing a bathroom cabinet and moving a closet. He said the tile floor was so badly installed that it had to be removed.

The tenant responded to the landlord's testimony. He said that landlord came to the house and saw various stages of the work and that he gave him several opportunities to sign the agreement. He said that the landlord did not want to pay for anything but the cheapest materials and, with respect to the tile floor, the subfloor was in poor shape, but the landlord was not prepared to pay for the materials to put in a new sub floor and this compromised the quality of the tile work. With respect to the bathroom cabinet, he said he removed it because of the severe mould issues in the bathroom.

During the course of the hearing the parties were afforded an opportunity to discuss the settlement of their respective claims, but the parties were unable to agree to terms of settlement.

Analysis and conclusion

The landlord and the tenant acknowledged that there was an agreement that the tenant would buy materials and perform work to repair and renovate the rental unit and the landlord would be responsible for the cost of materials, part of which would be paid by way of a rent reduction. The tenant submitted evidence that he purchased materials and performed work in accordance with the agreement. The landlord testified that the work was not properly performed and was essentially valueless. He did not submit any documents or photographs to support his position. The landlord did not submit any evidence to show that he has made any repairs or improvements following the tenant's departure from the rental unit. The landlord made an agreement with his tenant to grant him a rent reduction in exchange for work and material; he is not in a position to judge the work performed to the exacting standard of a professional contractor. I accept the tenant's testimony that there were problems with the quality of some of the work due to the landlord's unwillingness to agree to needed expenditures, such as a new subfloor and I find that the consequences of the landlord's frugality should not be visited upon the tenant. I find that the tenant is entitled to compensation as agreed for his expenditure for materials and supplies. With respect to the tenant's claim for reimbursement of rent that he paid for periods that he claimed not to have lived at the rental unit, I find that the tenant is not entitled to repayment of rent; he entered into the tenancy with open eyes, aware of the deficiencies in the rental property and prepared to perform work to rectify them for a reduction in rent. Although a landlord is expected to provide accommodation that is suitable for occupation, I find that it is not appropriate for me to award damages to compensate the tenant for an unwise decision when he knew at the time of renting or soon after that the rental unit needed work and instead of seeking a remedy pursuant to the *Residential Tenancy Act*, he proceeded to make an agreement with the landlord to carry out he needed repairs himself.

I find that the tenant is entitled to recover the net amount of his claimed expenditures for supplies and materials, in the amount of \$1,852.45, but not to reimbursement of rent for the reasons given. I find that the tenant is not entitled to recovery of double his security deposit because the landlord commenced his claim to retain the deposit within 15 days of his deemed receipt of the tenant's January 4th letter setting out his forwarding address as required by section 38 of the *Residential Tenancy Act*. The tenant has been partially successful and he is entitled to recover \$50.00 of his \$100.00 filing fee for a total award of \$1,902.45.

Addressing the landlord's claims, I find that the landlord is entitled to an award for unpaid rent for the month of December because the tenant left without notice during the month of December. The tenancy was for a fixed term ending February 29, 2012, but the landlord has not provided any evidence to show that he acted to mitigate his damages by attempting to re-rent the unit. He complained that the unit was not left in a

suitable condition to allow it to be re-rented, but on the evidence the rental unit was not suitable for occupancy when the tenancy commenced and the landlord cannot lay the blame for the condition of the rental unit on the tenant. The landlord has not proved on a balance of probabilities that he has acted to mitigate his loss and his claim for loss of rental income after December is dismissed without leave to reapply.

The landlord has not submitted evidence to support a claim for damages to the rental unit in the amount of \$575.00, or any lesser amount and that claim is also dismissed without leave to reapply. Pursuant to the tenancy agreement the tenant was responsible for paying hydro and gas utilities and I find that the landlord is entitled to recover the claimed amount of \$510.00 for natural gas consumed during the tenancy for a total award of \$1,660.00. The landlord is entitled to recover the \$50.00 filing fee for his application for a total award of \$1,710.00. I order that the landlord retain the security deposit of \$575.00 in partial satisfaction of this award for a net award of \$1,135.00.

Pursuant to section 72 of the *Residential Tenancy Act*, I set off the award to the landlord against the amount due to the tenant, this leaves a net amount due to the tenant of \$767.45 and I grant the tenant a monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court 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: May 1, 2012

Residential Tenancy Branch