



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord : OPR, MNR, MNSD, MNDC and FF
Tenant: MNDC, MNSD, RR and FF

This hearing was convened on applications by both the landlord and the tenant.

By application of May 14, 2012, the landlord sought an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated May 2, 2012. The landlord withdrew that part of the application as the notice had crossed the tenants' earlier notice to end the tenancy and the tenants have moved. The landlord continued to seek a monetary award for unpaid rent for May 2012 and loss of rent for June 2012. In addition, while the landlords did not indicate a claim for damage to the rental unit on their application, they introduced claims in evidence and the attending tenant agreed to address those in the present hearing. The landlords also seek to recover their filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

By application of May 26, 2012 the tenants sought an abatement of rent for loss of quiet enjoyment due to renovations of basement suites in the side-by-side duplexes and credit for payment of the landlords' portion of utilities payments. The tenants also seek return of their security deposit and recovery of their filing fee.

Issue(s) to be Decided

The landlords' application now requires a decision on whether they are entitled to an award for unpaid rent, loss of rent, damage to the rental unit and authorization to retain the security deposit in set off against the balance.

The tenants application requires a decision on whether and in what amount they are entitled to rent abatement for loss of quiet enjoyment, the landlords' share of utilities and return of the security deposit

Background, Evidence and Analysis

This tenancy began on November 1, 2010. Rent was \$970 per month and the landlord holds a security deposit of \$485 paid on October 1, 2010. The tenants gave one-month notice to end the tenancy on April 23, 2012, effective May 31, 2012, and vacated the rental unit on May 18, 2012.

As a matter of note, the present landlord purchased the rental building with possession on or about March 28, 2012.

Landlords' Claims

On the landlords' claims, I find as follows:

Rent for May 2012 - \$970. The parties agree that the tenants did not pay the rent for May 2012, but the tenant stated that, intending to leave in mid-month, she asked the landlords to retain the security deposit against the rent. However, section 45 of the *Act* requires that tenants give notice of one full month following the next rent due payment. Therefore, the tenants' notice given on April 23, 2012 could not have an end of tenancy date before May 31, 2012. Therefore, I find that the tenants are responsible for the May rent and this claim is allowed in full.

Loss of rent for June 2012. - \$970. As this was a month to month tenancy, I find that the tenants' notice was effective on May 31, 2012. While the landlord's stated that the rental unit was left requiring considerable cleaning, I find that with notice given one week earlier than required and gave vacant possession two weeks early, the landlords had adequate time to clean and advertise the unit for rent for June 1, 2012. Therefore, this claim is dismissed.

Lock replacement, general cleaning and carpet cleaning. The landlords have offered no specific amounts on these claims as the work has not yet been completed. On the question of the lock, the landlord stated that the key had been broken in the lock requiring replacement. The tenant gave credible evidence that the tenants had not broken the lock and, in fact, had installed the lock at the tenants' their own expense with consent of the landlord. For want of evidence, I dismiss this part of the claim.

As to the general cleaning and carpet cleaning, the carpets have not yet been done. The tenant stated that during a visit by the landlord to measure the windows for replacement, he had told the tenant not to worry about cleaning as he had planned renovations to the unit. I accept the evidence of the tenant on that question, and while I find it applicable to a claim for carpet cleaning, I accept the evidence of the landlord that appliances and fixtures had been left in need of cleaning and that she has done that work. Therefore, I will allow \$100 for general cleaning.

Tenants' Claims

Loss of quiet enjoyment - \$2,415. The parties concur that renovations were underway from the first week of April 2012 until the tenants vacated on May 18, 2012, although they disagree on the impact of the renovations on the tenants. They concur that the work resulted in two interruptions of the water supply, one of which involved some flooding of a common area. The landlords' evidence was that the bulk of the renovation work took place in the basement suite of the adjoining duplex although some work was also done in suite directly below that of the tenants. The tenant stated that work often carried on into late in the evening. I find that the tenants suffered a substantial loss of quiet enjoyment for six weeks and set the award for the loss at 35 percent of the rent due or paid for one and one-half months $(\$970 + \$485) = \$1,445 \times .35 = \509.25 .

Landlords' share of utilities - \$92.80. The landlords had originally challenged a previously negotiated agreement between the tenants and the previous landlord that utilities should be split 80% tenants and 20% landlord. However, they have since agreed to the split and agree that the claim is a reasonable estimate. It is allowed in full.

Claims by Both

Having found merit in both applications, I find that both parties should remain responsible for their own filing fees and that the landlord should retain the security deposit in set off.

Thus, I find that accounts balance as follows;

Tenants' Credits		
Award for loss of quiet enjoyment	509.25	
Landlords' share of utilities	<u>92.80</u>	
	\$1,087.05	\$1,087.05
Award to Landlords		
Rent for May 2012	\$ 970.00	
General cleaning	<u>100.00</u>	
	\$1,070.00	- <u>1,070.00</u>
Balance due to tenants		\$ 17.04

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$17.04, enforceable through the Provincial Court of British Columbia, for service on the landlords.

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: June 05, 2012.

Residential Tenancy Branch