



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

- 1) For a monetary order for compensation for loss under the Act; and
- 2) To keep all or part of the pet deposit and security deposit paid by the tenant.

The tenants' application is seeking orders as follows:

- 1) For a monetary order for compensation for loss under the Act; and
- 2) For the return of double the pet deposit and security deposit paid to the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary compensation for loss under the Act?
Is the landlord entitled to keep all or part of the pet deposit and security deposit?
Are the tenants entitled to a monetary order for loss under the Act?
Are the tenants entitled to the return of double the pet deposit and security deposit?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement which began on March, 1, 2012. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 and a pet deposit of \$950.00 were paid by the

tenants. The tenants vacated the rental unit on May 27, 2012. Filed in evidence is a copy of the fixed term tenancy agreement.

Landlord's application

The landlord claims as follows:

a.	Loss of rent for June 2012	\$1,900.00
c.	Cost of filing application	\$50.00
d.	Total amount claimed	\$3,850.00

Loss of rent for June 2012 and July 2012

The landlord testified the tenants' breached the fixed term tenancy agreement by moving out of the rental unit at the end of May 2012. The landlord stated the tenants provided a letter on May 22, 2012, that they would be leaving on May 28, 2012. As, a result, this did not give her reasonable notice to rent the unit for June 2012. The landlord seeks to recover the loss of revenue for June 2012 in the amount of \$1,900.00.

The landlord testified that she was able to rent the unit with a new fixed term tenancy agreement commencing July 1, 2012, however, she had to reduce the rent to \$1,800.00 per month. The landlord is seeks compensation for breaching the fixed term agreement in the amount of \$1,900.00.

The tenant (TJ) testified they made the decision to leave the rental unit as the landlord failed to do any of the work requested in a letter sent on May 14, 2012. The tenant (TJ) stated that there was black toxic mould which was making them sick. Filed in evidence are photographs. Filed in evidence is a letter for the tenant's doctor dated June 13, 2012.

The landlord disputes that there was black toxic mould in the rental unit. The landlord stated that it was late December 2011 or early January 2012 that the rental unit was inspected by the City of (name) and an occupancy permit was issued for the rental unit. Further, on February 20, 2012, a move-in inspection was performed with both tenants and there were no signs of any mould in the rental unit. Filed in evidence is a copy of the move-in inspection report.

The landlord alleges the only reason that the tenants made up this story was because they were unhappy with the cost of the hydro utility.

Tenants' Application

The tenants' claims as follows:

a.	Return of double the security & pet deposit	\$3,800.00
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c.	Unusable space	\$1,900.00
d.	U-Haul moving expense	\$75.08
e.	Cost of filing application	\$50.00
f.	Total amount claimed	\$6,516.50

Return of double the security & pet deposit

The tenant (TJ) testified they should be entitled to double their security and pet deposit as the landlord only had 15 days to claim against it for damages. The tenants seek to recover \$3,880.00.

BC Hydro Bill

The tenant (TJ) testified that the landlord should be responsible to pay for the amount of the hydro bill which exceeds \$350.00, as the landlord told her that is what the hydro utility would cost. The tenants seek to recover \$691.42.

The tenant testified that at the beginning of May 2012, she contacted the landlord about their excessive hydro bill and the landlord sent an electrician to the rental unit and the electrician found no deficiencies. The tenant also stated that hydro company was also involved and indicated there were no problems with the smart meter which was recently installed.

The landlord testified that hydro utility is not included in rent, and that the normal consumption was about \$350.00. The landlord stated she paid to have an electrician come and look at the wiring to ensure everything was up to code. The landlord stated she has no control of the cost of hydro or the consumption of hydro the tenants use and is not responsible to pay their utility bill.

Unusable space

The tenant (TJ) testified that she is seeking compensation as the entire basement was full of mould and was unusable and her boyfriend was sleeping outside in a tent. The tenants seek to recover \$1,900.00 in compensation.

The landlord testified that the tenant is making up stories.

U-Haul moving expense

The tenant (TJ) testified they believe that the rental unit was unfit to live. The tenants seek to recover \$75.08 for renting a u-haul.

The landlord testified she is not responsible for any move cost the tenants incurred.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

In this case, the both parties have the burden of proof to prove a violation of the Act and a corresponding loss.

Landlord's application

Loss of rent for June 2012 and July 2012

The rental unit was inspection by the City of (name) in late December 2011 or early January 2012. There were no deficiencies and an occupancy permit was provided for the rental unit. The parties on February 20, 2012, inspected the rental unit and no deficiencies were noted. The photographs submitted by the tenant do not support that there is black toxic mould and there is no report by any expert to support such claim.

The letter written by the tenant's doctor is dated June 13, 2012, after the commencement of the landlord application and after the tenant move-out of the rental unit. The letter does not suggest the tenant has been tested for mould illness or that the tenant is experiencing any signs of mould illness. The letter merely says "For health reasons I strongly recommended that (name) move to another place as exposure to the mould will lead to significant health problems." This letter is solely based on information provided by the tenant.

In this case, the evidence of the landlord was that the tenants were unhappy about the cost of the hydro utility and are merely make a story up to renege on their responsibilities of the fixed term tenancy agreement. I accept the landlord testimony over the tenants as there was no concerns prior to the hydro bill. The tenants sent a letter on May 14, 2012, requesting repairs to the rental unit and vacated 13 days later, not providing the landlord any reasonable amount of time to address their concerns. Further, the tenants made no application for dispute resolution requesting the landlord make repairs to the rental unit.

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy. [Emphasis added.]

I find that the tenants have breached section 45 of the Act as the earliest date she could have legally ended the tenancy was February 28, 2013, as stated in the tenancy agreement. Therefore, I find that the landlord is entitled to recover loss of rent for June 2012, rent in the amount of **\$1,900.00**

As the landlord was able to find new tenants for July 1, 2012, under a new fixed term tenancy agreement, the landlord is not entitled to be compensated for the full amount of rent for July 2012, however as the landlord was able to rent the unit for \$1,800.00, and the tenants rent was \$1,900.00 that rent is reduced by \$1,800.00. The landlord is entitled to claim the differences between the two rents. Therefore, the landlord is entitled to loss rent for July 2012, in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and pet deposit and interest of **\$1,900.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$150.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Tenants' Application

Return of double the security & pet deposit

In this case, the landlord had the right to claim against the security deposit for loss of rent and as result of the above finding. I dismiss the tenants' request for the return of double their deposits.

BC Hydro Bill

The tenants were responsible for the cost of the hydro utility, the fact the cost of this utility was more than what the tenants were expected is not the landlords responsible. Further, the landlord made reasonable steps to ensure there were no other explanations for the consumption of the utilities by having an electrician check the wiring. I find there is no merit to the tenants claim for compensation and I dismiss their claim.

Unusable space

The evidence of the tenant was due to mould they were unable to use the entire basement and her boyfriend was sleeping outside in a tent. The letter written by the tenants on May 14, 2012, to the landlord does not state that there is any unusable space or the fact they are claiming to be sleeping outside. I find that if this was factual, then this would have been important enough to list in the letter of May 14, 2012. I accept the landlord testimony that the tenant is merely making up a story and I dismiss the tenants' claim for compensation.

U-Haul moving expense

The landlord is not responsible to pay for any moving cost of the tenants. I dismiss the tenants' claim for compensation.

As I have dismissed, the tenants' entire application the tenants are not entitled to recover the cost of filing their application.

Conclusion

The landlord is granted a monetary and may keep the security deposit and pet deposit in partial satisfaction of the claim and is granted an order for the balance due.

The tenants' application is dismissed.

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: August 01, 2012.

Residential Tenancy Branch