



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; MNSD; FF

Introduction

This Hearing was convened to consider the Landlord's Application seeking a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenants with the Notice of Hearing documents and copies of her documentary evidence by registered mail.

Preliminary Matters

The Landlord did not indicate in the "Monetary Order" section of her Application that she was seeking to retain the security deposit or pet damage deposit, however in the "Details of Dispute" Section of the Application, it is clear that she is seeking to set off the deposits against her monetary award. The Landlord did not amend her application to include a request for cleaning and gardening costs, but she provided the Residential Tenancy Branch and the Tenants a document dated June 14, 2012, which sets out a claim for this additional cost. Therefore, I have amended the Landlord's Application filed June 11, 2012, to include these claims.

The Tenants testified that they have filed their own application for damages and return of the security deposit which is set to be heard in October, 2012. They stated that they filed it about a week before this Hearing and asked that it be considered today as a cross application. As I explained to the Tenants, their Application was not scheduled to be heard with the Landlord's Application because it was only filed recently and therefore I did not have it. The Landlord provided the Tenants with her Application and documentary evidence 2 months ago and I find that the Tenants could have filed and served the Landlord with their cross application more expeditiously. The Landlord wished to proceed with her application today and therefore I declined to adjourn her application to October to be heard with the Tenants' application.

Issues to be Decided

1. Is the Landlord entitled to compensation from the Tenants for damage to the septic pump at the rental property and the cost of cleaning and gardening at the end of the tenancy?
2. Is the Landlord entitled to apply the security deposit and pet damage deposit against her monetary award?

Background and Evidence

This tenancy began on May 1, 2011, and ended on May 31, 2012. Monthly rent was \$1,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 and a pet damage deposit in the amount of \$50.00. The parties signed a tenancy agreement and addendum. No copy of the tenancy agreement was provided in evidence, but the Landlord provided a copy of the addendum.

The parties agreed that they met for a Condition Inspection of the property at the beginning of the tenancy. The Landlord testified that a Condition Inspection Report was completed at the end of the tenancy as well. She stated that she did not provide the Tenants with a copy of the move-out Condition Inspection Report. Neither of the Condition Inspection Reports was provided in evidence.

The Landlord provided the following testimony:

The Landlord testified that the Tenants burned out the septic pump by flushing objects down the toilet that could not be broken down by the septic system. The Landlord testified that the Tenants signed the addendum which stated that only water, sewage and toilet paper were to be flushed down the toilet and that there was evidence that the Tenants had also flushed cleaning products (dusting cloths, disposable toilet cleaning brushes, and disposable mops), and paint.

The Landlord stated that the pump was 2 years old at the beginning of the tenancy and that she had the septic tanks professionally pumped before the Tenants moved in. After 10 months, the Tenants advised the Landlord that the pump alarm had gone off and was no longer pumping. The Landlord stated that the pump was burned out and had to be replaced. The Landlord provided a copy of the invoice in the amount of \$1,052.00. She stated that she believes she is only responsible for paying for cleaning the tanks and the dump fees because the pump was broken by the Tenant's neglect. She stated that the Tenant's portion of the invoice is \$756.00 (\$615.00 for a new pump, \$60.00 for the technician's labour installing the pump and \$81.00 HST).

The Landlord stated that she replaced the pump with a pump that would shut down rather than attempt to keep pumping if it was clogged, thereby burning out. She stated that two months after the new pump was installed, the Tenants advised her that the alarm had gone off again. This time, the technician found a large quantity of powdered detergent residue in the septic tanks. She stated that the technician told her that the Tenants were overusing powdered detergents and washing paint brushes, which caused the pump to stop operating. The Landlord provided a copy of the second invoice in evidence. The Landlord submitted that the total cost should be borne by the Tenants, \$198.00.

The Landlord testified that she has sold the property and that the new owners had the septic system inspected. The Landlord testified that the inspection passed and that as long as the system was used properly, there was no problem.

The Landlord stated that the addendum to the tenancy agreement provides that the Tenants were responsible for yard maintenance during the tenancy. She stated that the Tenants did not mow the lawn or do the weeding and raking. The Landlord testified that the Tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy. The Landlord stated that she spend 22 hours cleaning and gardening at the end of the tenancy. She seeks compensation at \$25.00 an hour for her labour.

The Landlord seeks a total monetary award, calculated as follows:

Tenants' share of first invoice (for pump replacement)	\$756.00
Cost of second septic system flush	\$198.00
Landlord's labour (22 hours @\$25.00)	<u>\$550.00</u>
TOTAL	\$1,504.00

The Tenants gave the following testimony:

The Tenants stated that they had a team of five people helping to clean the rental unit at the end of the tenancy and that it was spotless.

The Tenants testified that the rental unit was really dirty at the beginning of the tenancy and that they spent hours cleaning it and taking garbage to the dump. The Tenants testified that the gardens were a mess at the beginning of the tenancy. They stated that the north side of the rental property was covered in algae; there were blackberries growing in the flower beds; weeds growing everywhere; and the trees and hedges needed trimming and pruning. The Tenant stated that they cleared away the weeds

and brambles, removed the algae, trimmed the hedges and pruned the trees, all of which took hours.

The Tenants agreed that there were some weeds in the flower beds at the end of the tenancy and that the lawn needed mowing. They stated that they normally kept the lawn at about 2 inches, but that their lawn mower had broken down towards the end of the tenancy so the lawn was about 4 inches high. They stated that they were prepared to borrow a lawn mower to mow the lawn, but the Landlord told them not to bother because it was a 1/2 hour job and she would take care of it.

The Tenants stated that they were familiar with septic systems and that they did not flush any disposable mops or toilet brushes down the toilet. The Tenants testified that they use the disposable mops but have never even seen disposable toilet brushes before.

The Tenants submitted that the pump failed the second time because the Landlord had not snaked the lines and that the soap residue was old and had built up in the lines. The Tenants stated that they do not use powdered soap and always used liquid washing soap.

The Tenants testified that they were away a lot in the last two months of their tenancy because a family member was very ill and they were with the family member in another city. The Tenants stated that they only did about 2 or 3 loads of laundry over that two month period.

The Landlord gave the following reply:

The Landlord disputed that the Tenants were mostly absent the last two months of the tenancy. She stated that she lived nearby and knew they were home.

The Landlord stated that the lines were not snaked because it was not necessary. She stated that the technician's practice was to have her flush the toilet and run the water after the tanks had been cleaned and to do a visual check to make sure the lines were clear and running efficiently. She stated that there was no need to snake the lines because they were not plugged.

Analysis

The tenancy ended on May 31, 2012 and the Landlord filed her Application on June 11, 2012. I am satisfied that she filed her Application within the 15 days allowed under Section 38(1) of the Act.

Section 36(2) of the Act provides that a landlord's right to claim for damages against a security or pet damage deposit is extinguished if the landlord does not complete a move out condition inspection report and provide a copy to the tenant at the end of the tenancy. In this case the Landlord did not provide the Tenants with a copy of the move-out Condition Inspection Report and therefore extinguished her right to claim against the deposits for damages. However, the Landlord retains the right under Section 67 of the Act to claim for damage or loss, and the right under Section 72(2)(a) to deduct any such payment from the security deposit.

This is the Landlord's claim for damage or loss under the Act and tenancy agreement and therefore **the Landlord has the burden of proof to establish her claim** on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord 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.

With respect to the first incident with the septic pump, I find that the Landlord failed to provide sufficient evidence that the damage or loss occurred due to the actions or neglect of the Tenants. The Landlord provided no documentary evidence that she had pumped the tanks just prior to the beginning of the tenancy (for example, a copy of the invoice for this service). Therefore, I find that the Landlord did not prove, on the balance of probabilities, that the Tenants flushed the items into the septic system and I dismiss this portion of the Landlord's claim.

I allow the Landlord's claim with respect to the second incident. I find it probable that the visual inspection of the lines by the technician would have indicated a blockage in the lines, and therefore a need to use a snake to unblock them. This portion of the Landlord's claim is allowed in the amount of **\$198.00**.

Section 37 of the Act requires tenants to leave a rental unit **reasonably clean** at the end of a tenancy. The Tenants disputed the Landlord's claim that the rental unit was not reasonably clean at the end of the tenancy. The photographs provided in evidence

indicate that behind the washer and dryer had not been cleaned at the end of the tenancy, however the Tenants testified that the washing machine and dryer were not pulled away from the wall at the move in condition inspection, and that the place was really dirty when they moved in. Therefore, I find that there is insufficient proof that those items were not left by the previous occupants. The photographs also include one picture of a window with debris in the bottom left corner, but the Tenants testified that all of the other windows were cleaned and that they must have missed just one. The Landlord did not provide a copy of either of the condition inspection reports in support of her testimony.

The photographs of the yard indicate there are weeds in the flower beds and along a garden wall. The Tenants acknowledge that they did not mow the lawn at the end of the tenancy and that they had not kept up with the weeding for the last few weeks.

For the reasons set out above, I find that the Landlord did not provide sufficient evidence to support her claim in the amount of \$525.00 for cleaning and gardening. However, the Tenants acknowledged that they missed cleaning a window and that the garden was in need of attention and therefore I allow this portion of the Landlord's claim in the amount of **\$125.00** (5 hours @\$25.00).

The Landlord has been partially successful in her claim and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

I find that the Landlord has established a total monetary claim in the amount of **\$373.00** (\$198.00 + \$125.00 + \$50.00). Pursuant to the provisions of Section 71 of the Act, the Landlord may deduct that amount from the deposits held. The remainder of the deposits must be returned to the Tenants immediately.

I hereby provide the Tenants a Monetary Order in the amount of **\$277.00** against the Landlord, representing return of the residue of the deposits (\$650.00 - \$373.00).

Conclusion

The Landlord has been awarded a monetary award in the amount of **\$373.00**, which she may deduct from the deposits held.

I hereby provide the Tenants a Monetary Order in the amount of **\$277.00**, representing return of the balance of the security and pet damage deposits. This Order may be served on the Landlord and filed in the Provincial Court of British Columbia (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: August 27, 2012.

Residential Tenancy Branch