



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed July 24, 2012: MNR; MND; MNSD; FF; O

Tenants' application filed September 25, 2012: MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek a Monetary Order for unpaid rent and damages to the rental property; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek compensation for damage or loss under the Act, regulation or tenancy agreement; return of the security deposit; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

It was established that each party served the other with their Notice of Hearing documents and documentary evidence, by registered mail. Tracking numbers were provided for the registered documents.

Issues to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent, NSF charges, cleaning costs and damages to the rental unit?
- May the Landlords set off the security deposit against their monetary award?
- Are the Tenants entitled to compensation for a flooded basement and construction noise?
- Are the Tenants entitled to a monetary award equivalent to double the amount of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This was a one year lease, commencing September 1, 2011. Monthly rent was \$1,150.00 due on the first day of each month. Utilities were not included in the rent. The Tenants paid a security deposit

in the amount of \$575.00 on August 8, 2011. In May the Tenants gave the Landlords verbal notice that they were ending the tenancy effective May 31, 2012.

The Landlords provided the following testimony:

The Landlords stated that they do not know for certain when the Tenants vacated the rental unit, but that it was at some point before May 26, 2012. The Landlords stated that they found the rental unit unlocked with two sets of keys in a drawer. The Landlords testified that there were four people living in the rental unit and therefore they needed to change the locks because all of the keys were not accounted for. The Landlords provided a receipt for the cost of rekeying the locks and cutting 4 new keys.

The Landlords testified that the Tenants did not provide them with their forwarding address and that they found out where the Tenants lived by conducting a search on the internet.

The Landlords stated that the Tenants' cheque for May, 2012 rent and utilities in the amount of \$1,216.80 was returned NSF. The Landlords provided a copy of the dishonoured cheque in evidence. They stated that four cheques had been returned NSF over the course of the tenancy. The Landlords provided copies of the charge back notices from the bank, each in the amount of \$5.00.

The Landlords testified that the Tenants left furniture, bundles of asphalt shingles, used motor oil, beer bottles and cardboard boxes at the rental unit. The Landlords provided photographs and a receipt for dump fees. They stated that the Tenants did not clean the rental unit or shampoo the carpets at the end of the tenancy. The Landlords stated that they rented a carpet shampooer but some stains would not come out so they hired a professional to clean the carpets. The Landlords provided a receipt for the rental of a carpet shampooer and a copy of the professional carpet cleaners' invoice. The Landlords stated that the carpets are still stained and they seek compensation in the amount of \$100.00 for the depreciation in the value of the carpet.

The Landlords also seek a monetary award for unpaid water bills, storage fees, and compensation for their labour for cleaning and dismantling a workstation that was left in the basement.

The Landlords stated that they have already applied the security deposit towards the outstanding rent. The Landlords testified that they performed a Condition Inspection of the rental unit at the beginning of the tenancy and that they arranged with the male Tenant for the move-out Condition Inspection to take place on June 3, 2012, at 9:00 a.m. but he did not show up.

The Landlords provided a breakdown of their monetary claim, calculated as follows:

NSF cheque less security deposit (\$1,216.80 - \$575.00)	\$641.80
Landlords' labour to dismantle workstation (2 hours @\$50.00)	\$100.00
Landlords' labour to clean stove and fridge	\$60.00
Landlords' labour for general cleaning of house	\$100.00
Landlords' labour to move Tenants' discarded furniture	\$100.00
Landlords' labour to move 7 bundles of shingles left by Tenants	\$120.00
Landlords' labour to recycle cardboard boxes left by Tenants	\$20.00
Landlords' labour to dispose of used motor oil	\$20.00
Landlords' labour to clean and recycle beer bottles left by Tenants	\$20.00
Haul furniture and other materials to Goodwill and dump (4 hours @\$60.00)	\$240.00
Storage fees	\$100.00
Depreciation of carpet	\$100.00
Dump fees	\$8.00
Rekey locks and cut 4 keys	\$63.84
Unpaid water from January 1 – May 31, 2012	\$70.00
NSF charges (4 x \$5.00)	<u>\$20.00</u>
TOTAL	\$1,943.64

The Tenants provided the following testimony:

The Tenants did not dispute the following portions of the Landlords' claim:

Returned cheque	\$1,216.80
Cost to dispose of used motor oil	\$20.00
Unpaid water bills from January 1 – May 31, 2012	\$70.00

They disagreed with the amount that the Landlords seek for dismantling their workstation, but agreed that \$50.00 for this portion of the Landlords' claim was reasonable.

The Tenants stated that they researched the cost of storage and that it only cost \$50.00 to store items for a month, not the \$100.00 that the Landlord seeks.

The Tenants dispute the remainder of the Landlords' claim in its entirety. They testified that the house was not clean when they moved in and that the Landlord did not advise them that there was a flood in the basement a couple of weeks before the tenancy began. The Tenants stated that the carpet was stained from the flood.

The Tenants testified that in September, 2011, the City started construction on sewer lines right beside the rental property and that the Landlords were aware that this was going to happen but did not advise the Tenants. They stated that the construction stopped for the winter and started up again in May, 2012.

The Tenants asked that the Landlords refund them their first month's rent because the Landlords did not inform them of the flood that occurred two weeks before they moved in. They also seek compensation in the equivalent of one month's rent for the inconvenience, noise and foul language that they had to put up with while the construction was taking place.

The Tenants testified that they gave verbal notice that they were ending the tenancy and e-mailed their forwarding address to the Landlord. They stated that the female Tenant moved out on May 6, 2012 and the male Tenant moved out on May 24, 2012, leaving the keys in the mail box.

The Tenants seek compensation equivalent to double the amount of the security deposit because the Landlord did not return it within 15 days of the end of the Tenancy.

The Tenants' application indicates that their total claim, after setting off the amounts that they agree that they owe the Landlords, is \$2,443.20.

Analysis

The Landlords stated that they applied the security deposit towards the unpaid rent for May, 2012. This is contrary to the Act. Unless a landlord has a tenant's written consent to retain all or part of a security deposit, the landlord must either file an application for dispute resolution against the security deposit or return it in full within 15 days of the end of the tenancy and the date that the tenant provides a forwarding address in writing (which ever date is the later date). In this case, I find that the Tenants did not provide sufficient evidence that they provided the Landlords their forwarding address in writing and therefore, I find that the Tenants are not entitled to double the amount of the security deposit.

The Tenants did not dispute that they owe the Landlords **\$1,216.80** for the dishonoured cheque; **\$20.00** for the cost of disposing of used motor oil; and **\$70.00** for unpaid water bills. Therefore, this portion of the Landlords' claim is allowed.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean at the end of the tenancy. Based on the photographs provided, I find that the Tenants did not

leave the rental unit reasonably clean and that they left garbage and discarded furniture at the rental unit. This left the Landlords to clean the rental unit and dispose of the Tenants' garbage. I find that the Landlords are entitled to an award for their labour, however I find that the hourly rate that the Landlords claim is excessive. The Tenants agreed that \$50.00 was reasonable for the Landlords' labour in dismantling an abandoned work station. Therefore, I award the Landlords the total sum of \$325.00 in compensation for their labour in cleaning, moving and disposing of the Tenants' garbage, calculated as follows:

dismantling the workstation (2 hours @\$25.00 an hour)	\$50.00
general cleaning and cleaning fridge and stove (5 hours)	\$125.00
moving and disposing of Tenants' garbage (6 hours)	<u>\$150.00</u>
TOTAL compensation for labour	\$325.00

Residential Tenancy Policy Guideline 1 requires a tenant to shampoo carpets at the end of a tenancy of one year. The Tenants did not live in the rental unit for a year. Therefore I dismiss the Landlords' claim for the cost of shampooing the carpets at the end of the tenancy. The Tenants submitted that the carpets were stained because of a flood that occurred two weeks prior to the beginning of the tenancy. I find that the Landlords did not provide sufficient evidence to support their claim in the amount of \$100.00 for depreciation of the carpet.

The Landlords did not provide any evidence to support a claim of \$100.00 for the cost of storing the Tenants' abandoned furniture and therefore this portion of their claim is dismissed.

I find the Landlords' claim for the cost of dump fees, supported by the receipt, is reasonable and allow this portion of their claim in the amount of **\$8.00**.

Section 37 of the Act requires a tenant to return all keys to the rental unit to the landlord at the end of a tenancy. I find that the Tenants did not give the Landlords the keys by leaving them in a mail box or in a drawer. I allow the Landlords' claim, supported by the receipt, for the cost of rekeying the rental unit and cutting keys in the amount of **\$63.84**.

Section 7(c) of the Regulation provides that a landlord may recover the cost of a service fee charged by a financial institution for the return of a tenant's cheque. I find that the Landlords have established this portion of their claim, supported by the charge back notices, in the amount of **\$20.00**.

Pursuant to the provisions of Section 72 of the Act, I find that the Landlords may apply the security deposit towards partial satisfaction of their monetary award.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the filing fee from the Tenants.

The Landlords have established a total monetary award, calculated as follows:

Dishonoured cheque	\$1,216.80
NSF fees	\$20.00
Rekey locks and cut keys	\$63.84
Unpaid water bills	\$70.00
Dump fees	\$8.00
Landlords' labour	\$325.00
Recovery of filing fee	<u>\$50.00</u>
subtotal	\$1,753.64
Less set off of security deposit	<u>-\$575.00</u>
TOTAL	\$1,178.64

The Tenants have claimed for compensation for damage or loss under the Act, regulation or tenancy agreement.

To prove a loss and have the Landlords pay for the loss requires the Tenants 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 Landlord 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 Tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants provided insufficient evidence that they suffered a loss as a result of the actions or neglect of the Landlord **in violation of the Act**. Therefore, the Tenants' application is dismissed in its entirety.

Conclusion

The Tenant's application is **dismissed in its entirety**.

The Landlords are provided a Monetary Order in the amount of **\$1,178.64** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 22, 2012.

Residential Tenancy Branch