



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

This hearing dealt with a tenants' application for return of double the security deposit; compensation for damage or loss under the Act, regulations or tenancy agreement; and, a determination as to when the tenancy ended.

Preliminary and Procedural Matters

In filing this application the tenants sought compensation of \$10,451.38. In filing their written submissions and evidence the tenant's claim was reduced to \$7,451.62. I amended the application accordingly.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the originally scheduled hearing date I had heard from the tenants and started to hear from the landlords; however, the landlords' telephone connection appeared to be having difficulty and allotted time was nearing an end. Therefore, I adjourned the hearing with Notices of Adjourned Hearing sent to both parties.

The hearing reconvened October 4, 2012 during which time the landlord was heard, the parties were permitted to ask questions of each other, and make final arguments. It should be noted that the tenant tried cross-examining the landlord; however, I found the cross examination lead to argumentative comments which I did not find helpful in this setting. Therefore, I instructed the parties to point out inconsistencies or deficiencies in the other's submissions rather than continue with cross-examination.

Issue(s) to be Decided

1. Have the tenants established an entitlement to end the tenancy when they did?
2. Are the tenants entitled to return of double the security deposit?
3. Are the tenants entitled to recover the cost of painting the rental unit?

4. Are the tenants entitled to recover costs associated with living elsewhere temporarily and relocating?

Background and Evidence

The rental unit is the main level of a house and was occupied by the tenants and their two young children. The basement suite was also tenanted.

Although neither party provided a copy of a written tenancy agreement, the following tenancy details were undisputed:

- The tenants paid a \$1,200.00 security deposit for a one year fixed term tenancy set to commence May 1, 2012 and expire April 30, 2013.
- The monthly rent of \$2,400.00 was due on the 1st day of every month.

It was also undisputed that the tenants paid \$1,400.00 to have some of the walls repainted in the rental unit at the beginning of the tenancy and that the tenants would recover this amount by deducting \$127.00 from rent payments over the remainder of the year.

On May 12, 2012 the tenants stayed in a hotel due to threats of violence by the basement suite tenants. The tenants notified the landlords of the behaviour and the landlords met with the tenants the following day. The landlord, with the assistance of the tenant, filed an Application for Dispute Resolution in the days that followed to request an early end of tenancy and Order of Possession against the basement suite tenants.

On May 29, 2012 a hearing was held and the tenants appeared as witnesses for the landlord. Also on May 29, 2012 the tenants sent the landlord an email informing the landlord they would be ending the tenancy effective May 30, 2012.

On June 4, 2012 a decision was issued with respect to the application for an early end of tenancy against the basement suite tenants. The landlord's request was granted and an Order of Possession was issued with an effective date of two days after service.

On June 6, 2012 the tenants advised the landlord that the rental unit was vacant and the landlord began advertising the unit for rents. The landlord also asked the basement suite tenants to disregard the June 4, 2012 decision and continue with their tenancy. The basement suite tenants stayed until the end of June 2012 and then vacated.

Tenant's submissions and arguments –

The tenants provided considerable written and oral submissions. I have summarized the most relevant aspects.

The tenants argued that the landlords misrepresented the violent and destructive behaviour of the basement suite tenants so as to rent the unit to the tenants. As a result the tenants suffered a loss of quiet enjoyment of the rental unit and monetary damages.

The tenants submitted that the tenants disclosed to the landlord in an email prior to the tenancy that they had two small children who were not especially quiet as they are children who like to run and play. The tenants initially arranged for a friend to view the unit with the landlords. The tenants' friend informed the tenants that the landlord described the basement suite tenants as "quiet and professional". The tenants decided to view the house themselves with the landlord. The tenant enquired about the basement suite tenants as the tenants were not accustomed to living in a shared property. The landlord stated the basement suite tenants were "good" and "professional". The basement suite tenants were not home at the time and the tenant relied upon the landlord's representations.

Initially, the tenants were very satisfied with the rental unit; however, this was short-lived and on May 12, 2012 the following occurred:

- The male basement suite tenant was heard abusing his wife;
- The male basement suite tenant began calling the male tenant derogatory names and threatening to break into the rental unit and inflict physical harm upon the tenant.
- The police were called and the tenants took their children and stayed in a hotel.

Following the May 12, 2012 incident the male tenant stayed with friends in Vancouver and the female tenant took the children back to Vancouver Island to stay with family. The female tenant testified that she is a stay-at-home mom with young children and was fearful for her own safety and the safety of her children.

In assisting the landlords prepare for the May 29, 2012 dispute resolution hearing with the basement suite tenants, on May 22, 2012 the landlords provided a copy of a police report dated January 1, 2012 to the tenant. The police report described a complaint from the previous main floor tenants against the basement suite tenants whereby the

female basement suite tenant entered the main floor without permission and punched the main floor tenant in the face. Further, the basement suite tenants had restricted the heat in the winter and refused to turn it back on. Another police complaint was made on January 13, 2012 whereby the same complainant reported that her car tires had been slashed. The complainant suspected that it was the basement suite tenants who were responsible for this vandalism.

The tenant claims that in preparing for the May 29, 2012 hearing he spoke with the landlord and the landlord indicated that the events described in the police reports did occur.

Upon considering the former tenant's statement to police the tenants feared the basement suite tenants for three reasons:

1. The basement suite tenants were capable of physical violence against the upstairs tenants;
2. The basement suite tenants acted vindictively against the former upstairs tenants by cutting off the heat source; and,
3. There was a risk of retaliatory behaviour as demonstrated by the former upstairs tenant's tires being slashed.

The tenants submitted that after reviewing the police reports the tenants decided they had to end their tenancy for fear of retaliation by the basement suite tenants. After the dispute resolution hearing of May 29, 2012 the tenants communicated to the landlord they were ending the tenancy effective May 30, 2012. The tenants vacated the rental unit and returned possession to the landlord June 6, 2012. The landlord accepted the end of tenancy as demonstrated by his efforts to re-rent.

The tenant submitted that after the tenants informed the landlord that they were ending their tenancy the landlord asked the basement suite tenants to continue with their tenancy. The tenant enquired as to whether the landlord made any representations to the subsequent tenants who rented the main level. The landlord responded that he had informed the incoming tenants that the basement suite tenants were "good and professional".

On June 21, 2012 the tenant requested return of the security deposit and provided a forwarding address in that email. The landlord responded, via email, on June 22, 2012 and advised the tenant it was too early to deal with the security deposit as the rental unit was not yet been re-rented.

Tenants' monetary claim –

Return of double security deposit	\$ 2,400.00
Recovery of painting costs	1,400.00
Hotel, ferry, storage, movers, rent	<u>3,651.62</u>
Total amended claim	\$ 7,451.62

The tenants were of the position the landlord has violated the Act by failing to return the security deposit or make an Application for Dispute Resolution seeking authorization to return it. Accordingly, the tenants are seeking return of double the security deposit.

The tenants were of the position that they have not had the benefit of recovering the painting costs through reduced rent since the tenancy ended so soon after it began. Accordingly, the tenants are seeking to recover the painting costs they incurred at the beginning of the tenancy.

The claim for hotel, ferry, storage and movers were supported by invoices, receipts and credit card statements. The tenants further explained that they hired movers to pack and move their belongings to storage until their new accommodation was ready on July 1, 2012. The tenants then had to move their belongings again from storage to their new accommodation; however, they are only claiming costs associated to one of the moves. In addition, rent for their new accommodation, which is smaller and older than the rental unit, is \$100.00 more per month. The tenants included \$1,000.00 in their claim for the increased rent.

Landlord's submissions and response –

The landlord acknowledges that the landlord represented the basement suite tenants as being “good” and “professional” when the tenant enquired about them prior to entering into the tenancy agreement. The landlord does not recall using the term “quiet” and advised the tenants that there were previous issues concerning noise and laundry.

The landlord acknowledged that he had the police reports in his possession in January or February 2012; however, the reports were not conclusive evidence that the basement suite tenants were not good people as the reports were one-sided complaints. The landlord suggested that former tenant's slashed tires could have been caused by anybody. When the landlord tried to talk to the former upstairs tenant she did not want to talk about it to the landlord yet the landlord had received a different version of events from the basement suite tenants.

The landlord submitted that after January 2012 no further complaints were made by the former upstairs tenants. Nor did the landlord ever feel threatened by the basement suite tenants. Finally, the complaint made by the former upstairs tenant was against the female basement suite tenant and not the male basement suite tenant. Therefore, the landlord was of the position that a pattern of violent behaviour had not been established and the landlords did not misrepresent a fact to the tenants.

The landlord also submitted that the police reports were given to the tenant as the landlord's legal counsel and now the documentation is being used against him.

The landlord claimed that he responded to the tenants' concerns by meeting them on May 13, 2012 and filing an Application for Dispute Resolution shortly thereafter in an attempt to restore their quiet enjoyment. Yet, the tenants decided to move out before the decision was made. Had the tenants stayed the landlord would have pursued enforcement of the Order of Possession against the basement suite tenants.

The landlord acknowledged receiving the tenant's emails, including emails that: the tenants were ending the tenancy, that the unit was vacant, the request for return of the security deposit and forwarding address. The landlord explained that he has not returned the security deposit as he is unfamiliar with the requirements of the Act and because he has suffered loss of rent and there is damage to the rental unit. The landlord has not filed an Application for Dispute Resolution against the tenants.

The landlord objected to reimbursing the tenants for the painting as they would have recouped that cost had they stayed for the duration of their fixed term tenancy. Further, the walls were damaged when the tenants moved out.

Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to the tenants' claims against the landlord.

Section 91 of the Act provides that the common law applies to tenancy agreements and landlords and tenants except where modified by the Act. The Act does not specifically provide a remedy where a tenancy agreement is entered into due to misrepresentation; therefore, I have considered the common law where necessary and appropriate in making this decision.

Where one party gives false information to another party before the contract is made and the false statement induces that party to enter into the contract then

misrepresentation may be found. A misrepresentation need not be intentionally false to create liability. For instance, a statement made with conscious ignorance or a reckless disregard for the truth can create liability. Similarly, nondisclosure of material or important facts which would significantly alter the interpretation of the statement may also constitute misrepresentation.

Where a party relied upon a misrepresentation the contract may be voidable by the party who relied upon the false information and a claim damages may be made where the party suffered a loss as a result.

The tenants have asserted that the landlords made false statements with respect to the character of the basement suite tenants before the tenants entered into the tenancy agreement. It is undisputed that the tenants did ask about the basement suite tenants and the landlord's response is largely undisputed.

I accept the tenants' position that they relied upon the landlord's statements in deciding to rent the unit as they had no other reasonable way to assess the character of the basement suite tenants. I also accept that this was information of significance to the tenants as they had children and had not previously lived in a multi-family building.

The landlord submitted, in his defence, that the previous allegations of assault and vandalism by the former upstairs tenants were not corroborated by the basement suite tenants and did not form a pattern of behaviour that indicated disclosure was necessary. However, I reject the landlord's position as the landlord testified at the previous dispute resolution hearing that he was aware of numerous incidents involving the basement suite tenants. The Dispute Resolution Officer recorded the following statements and information with respect to the May 29, 2012 hearing:

"The landlord said...he received numerous complaints from the former tenants of the main floor suite about the behaviour of the downstairs tenants, including complaints he received after an incident in January when the police attended at the rental property and upstairs occupants reported that the female tenant had assaulted one of the occupants. There also were allegations that the tenants had turned off the power to the main floor rental unit and the male tenant was yelling and shouting at the occupants in the upstairs suite. The landlord submitted a copy of the police report with respect to the incident."

Considering the above, I find the landlords' testimony to be inconsistent and less than credible. In contrast, I found the tenants' testimony to be very detailed, consistent with

submissions made during the previous hearing and, therefore, more credible. Therefore, I prefer and accept the testimony of the tenants over that of the landlord.

I find the landlord's submissions that the previous allegation of assault concerned the female basement suite only to be irrelevant. As the tenants had enquired about the character of "the tenants" living in the basement suite I find it reasonable to conclude that the tenants were enquiring about both basement suite tenants, not just the male tenant.

I am satisfied the landlord is highly motivated by rental income and as a result has made false statements about the basement suite tenants to induce prospective tenants to enter into a tenancy agreement for the main level. I make this finding based upon the facts that:

- After seeking and obtaining an immediate Order of Possession against the basement suite tenants the landlord asked the basement suite tenants to continue their tenancy; and,
- The landlord informed the subsequent set of incoming tenants for the main level the basement suite tenants were good and professional despite allegations of threats and abuse lodged by the two immediately preceding sets of upstairs tenants.

Based upon all of the foregoing I find the tenants have proven, on the balance of probabilities, misrepresentation by the landlord. Accordingly, I accept that the tenants had the right and did void the tenancy agreement. Having heard the tenants removed the remainder of their positions and returned possession of the unit to the landlord on June 6, 2012 I find and order the tenancy ended June 6, 2012.

Having ordered the tenancy ended on June 6, 2012 due to misrepresentation by the landlord I further order that the landlord is precluded from making claims for unpaid or loss of rent against the tenants for the remainder of the fixed term.

Security Deposit

As the parties were informed during the hearing, the landlord's claims of damage or loss were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The landlord is at liberty to make a separate application for damage to the property.

Section 38 of the Act provides for the return of security deposits. A landlord must comply with section 38(1) of the Act by either returning the security deposit and interest to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

I find sufficient evidence through the exchange of emails that the landlords were in receipt of the tenants' forwarding address on June 22, 2012. I accept the tenants' submission that the receipt of the email communication satisfies the requirement that the forwarding address be in writing, pursuant to the *Electronic Transmissions Act*.

I find insufficient evidence the forwarding address was received prior to June 22, 2012. Accordingly, the landlords had 15 days from June 22, 2012 to repay the security deposit or file an Application for Dispute Resolution. The tenants filed their application seeking double the security deposit on July 3, 2012; however, 15 days had not elapsed at that time. Therefore, I find the tenants' entitled to return of single the security deposit and I award the tenants \$1,200.00.

Painting costs

Since the tenancy ended June 6, 2012 due to misrepresentation by the landlord the tenants did not have the benefit of the reduced rent payment to compensate them for the painting the rental unit. I find it unjust that the landlord would benefit from the improvement at the tenants' expense due to the landlord's misrepresentation. Therefore, I order the landlord to repay the tenants \$1,400.00 for painting costs.

Hotel, travel, moving, storage and rent

I find the tenants' evidence clearly demonstrates that the tenants suffered a financial loss as a result of the actions of the basement suite tenants and the landlords' misrepresentation. I find the tenants' claims for hotel, travel, moving and storage costs to supported by evidence and are likely conservative compared to their actual losses. Therefore, I award the tenants \$2,651.62 for these costs, as claimed.

I find insufficient information and evidence to compare the tenants' new accommodation to the rental unit. Nor was I provided copies of tenancy agreements to compare the services and facilities included in rent. Therefore, I deny the tenants' claim for the \$1,000.00 in additional rent.

Monetary Order

Having found the tenants largely successful in their application I award the tenants recovery of the \$100.00 filing fee they paid.

In summary, the landlords are ordered to pay the tenants and I provide the tenants with a Monetary Order calculated as follows:

Security deposit	\$ 1,200.00
Painting costs	1,400.00
Hotel, travel, moving and storage costs	2,651.62
Filing fee	<u>100.00</u>
Monetary Order	\$ 5,351.62

The Monetary Order must be served upon the landlords and may be enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$5,351.62 to serve upon the landlords and enforce as necessary.

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: November 1, 2012.

Residential Tenancy Branch