



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNR, MND, MNDC, MNSD and FF
Tenant: MNDC and MNSD

Introduction

This hearing was convened on applications by both the landlords and the tenants.

By application received October 2, 2012, the landlords seek a monetary award of \$4,253.80 for unpaid rent, damage to the rental unit, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the amount owed.

By application of September 18, 2012, the tenants seek a monetary award of \$22,525 based on a claim of wrongful eviction and return of their security deposit.

This matter was originally scheduled for hearing on November 13, 2012 on the tenants' application but was adjourned to the present hearing as the tenants' stated they had not received the landlords' application and Notice of Hearing. In his Interim Decision of November 14, 2012, the Arbitrator found that, "...the issues and evidence in both applications were relevant to each other and that it could be prejudicial to both parties if the matters were not heard at the same time.

Despite having made application and despite having been served with landlords' notice and evidence at an address given and recorded at the original hearing, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing.

Therefore, the tenants' application is dismissed without leave to reapply.

Nevertheless, I would note that I find glaring inconsistencies in the evidence submitted by the tenants. For example, the tenants claim a full nine months rent for the balance of their fixed term agreement when, in fact, the agreement submitted into evidence by both parties is for a month to month tenancy.

In addition, the tenants claim for reimbursement for motel expenses from August 27, 2012 on the claim that the landlords had locked them out of the rental unit at that time.

The receipt entered into evidence appears to have been altered from August 20 to August 29, 2012 in the "Date In" box and the receipt section shows payment of \$450 was, in fact, made on August 20, 2012, a time during which the tenants had claimed they were in Edmonton on a family emergency.

Moreover, the tenants claimed to have left the rental unit on August 13, 2012 in the hands of a house sitter who was to pay the rent and provide the landlord with a letter explaining their absence from the rental unit.

The tenants claimed that the subsequent removal of their furnishings and the landlords' appliances had been at the hands of unknown thieves.

In fact, a very astute neighbour had observed and photographed a commercially marked vehicle in the driveway loading furnishings. The landlord was able to locate the driver through the business advertised on the truck and he named the male tenant and stated he was helping him to move.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to monetary award for the claims submitted and in what amounts.

Background, Evidence and Analysis

This tenancy began on May 15, 2012. Rent was \$1,325 per month and the landlords hold a security deposit of \$600 paid at the beginning of the tenancy. Rent was due on the 15th day of the month.

During the hearing, the landlords gave evidence that they had attended the rental unit on August 16, 2012 to pick up the late rent or to serve a 10-Notice to End Tenancy. On

their arrival, they found the property had been abandoned furnishings removed including the refrigerator, stove, dishwasher, washer and dryer which were owned by the landlords.

The neighbour who had taken the photograph told them that the tenants had departed leaving the front door wide open, which he had subsequently closed.

The landlords changed the locks as I find they were fully entitled to do under the provisions of *Regulation 24(1)(b)(ii)*.

The landlords reported the matter to the local police detachment who deferred to the Residential Tenancy Branch dispute resolution process. The landlords referred the tenants to the police detachment when they received an email from them on August 26, 2012. The tenants' email explained that they had been in Edmonton, had left a letter explaining their absence and the rent with the house sitter. It said they had forgotten their cell phones when they left and had been out of contact for that reason. The landlords had tried to contact the tenants numerous times in the interim.

The landlords heard from the tenants again on September 17, 2012 when they emailed to enquire about return of their security deposit, then again when the tenants served them with the notice of the first hearing.

The landlords submitted numerous photographs showing extensive damage to the rental unit, including a hole in a bedroom wall penetrating through to the adjoining bathroom wall, damaged floors, missing kitchen taps, broken light fixture and trash throughout the rental unit..

The landlords stated that the restoration work is still continuing, and I grant them leave to apply for the damage to the rental unit when the final costs have been assessed.

For the present, the landlords claim, supported by photographs paid receipts, and I find as follows:

Unpaid rent - \$1,325. I find that the tenants abandoned the rental unit without having given notice and that the landlords are entitled to recover the rent for the period from August 15, 2012 to September 15, 2012 as claimed.

Carpet cleaning - \$239. On the basis of photographic evidence and paid receipt, this claim is allowed in full.

Dump fee - \$49. On the basis of photographic evidence and paid receipt, this claim is allowed in full.

Washer and dryer - \$799.52. This claim includes clothes washer at \$398 and a clothes dryer at \$298 plus \$83.52 tax. I accept the evidence of the landlords that these items were brand new at the beginning of the tenancy and the claim is allowed in full.

Dishwasher, refrigerator and stove - \$1,841.48. This claim is made up of a dishwasher at \$348, refrigerator at \$698 and stove at \$598 plus tax and is supported by a paid receipt. I accept the evidence of the landlords that these appliances were in “as new” condition and the claim is allowed in full.

Filing fee - \$50. As the landlords’ application has succeeded on its merits, I find that they are entitled to recover the filing fee for this proceeding from the tenants.

Security deposit – (\$600). As authorized by section 72 of the *Act*, I order that the landlords retain the security deposit in set off against the balance owed to her by the tenant.

Thus, I find that the tenants owe to the landlord an amount calculated as follows:

Rent for August 15, 2012 to September 15, 2012	\$ 1,325.00
Dump fee	49.00
Washer and Dryer	799.52
Dishwasher, refrigerator and stove	1,841.28
Filing fee	<u>50.00</u>
Sub total	\$4,303.80
Less retained security deposit (No interest due)	<u>- 600.00</u>
TOTAL	\$3,703.80

Conclusion

In addition to authorization to retain the security deposit in set off, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$3,703.80** for service on the tenants.

The tenants' application is dismissed in its entirety without leave to reapply

The landlords remain at liberty to make application for the repairs to the rental unit when the final costs have been determined.

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*.

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Dated: December 18, 2012.

Residential Tenancy Branch