



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, compensation for damage or loss under the Act and to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting compensation for damage or loss under the Act; return of the deposit paid and to recover the \$100.00 filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties confirmed that they had received all evidence supplied by the other. The landlord attempted to view the tenant's USB evidence and was not able to access the content.

Residential Tenancy Rules of Procedure require confirmation that the person who submits digital evidence ensure that the recipient of digital evidence has been able to access that evidence. As the tenants did not ensure that the landlord was able to view the digital evidence; the digital evidence was been set aside. The digital evidence included video footage and photographs. The photographs could have been submitted separately, but were not.

At the start of the hearing each application was reviewed. The tenants applied requesting return of their security deposit. A decision issued on June 28, 2012 (file

792814) made a finding, allowing the landlord to retain the \$850.00 deposit. Therefore, the matter of the deposit has been previously decided.

The tenants submitted a monetary claim in the sum of \$7,450.00 as compensation for “wrongful eviction after an illegal entry to unit by landlord X2.” The decision issued on June 28, 2012 determined that the tenants would be evicted. There was no evidence before me that the decision had been reviewed or of any judicial review that determined a new hearing should be held. Therefore, I found that the matter related to eviction had not been made in the absence of proper process and that I would dismiss the claim for wrongful eviction; equivalent to \$3,200.00 of the tenant’s total claim.

The tenants said that the balance of their claim was the equivalent of 1 month’s rent as compensation for each of the 2 illegal entries alleged made by the landlord; \$3,400.00.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$1,700.00 for loss of July 2012 rent revenue?

Is the landlord entitled to compensation in the sum of \$7,516.04 for damage to the rental unit and damage or loss under the Act?

Are the tenants entitled to compensation for damage or loss in the sum of \$3,400.00?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced in February 2012; rent was \$1,700.00 per month, due on the first day of each month. The \$850.00 deposit has been previously ordered retained by the landlord. There was no evidence before me that condition inspection reports had been completed.

The parties disputed the tenancy end date. The landlord said that the tenants vacated by June 24, 2012; that all of their property, except a computer, had been removed.

The tenants said that they did not vacate until June 28, 2012, when they returned to the unit to retrieve their computer.

The parties agreed that they each attended a conference call dispute resolution hearing held on the morning of June 28, 2012. The landlord had applied requesting an order of possession and a monetary order for unpaid rent. The decision resulted in an order of possession to the landlord; effective June 30, 2012. The landlord did not enforce the order of possession, as the tenants vacated the unit.

The landlord has made the following claim:

| | |
|---------------------------------|-------------------|
| July 2012 rent revenue | \$1,700.00 |
| Kitchen window replacement | 160.75 |
| Lock replacement and rat poison | 55.98 |
| Misc. Clean-up material | 80.30 |
| Dump fees | 86.00 |
| Boarding up kitchen window | 85.00 |
| Replace flooring | 1,387.37 |
| Flooring installation | 760.64 |
| Deliberate vandalism | 5,000.00 |
| TOTAL | \$9,316.04 |

The landlord supplied thirty photographs of the rental unit that were taken on June 24 and 28th, 2012. The photographs showed items left behind by the tenants, such as a couch, tables, garbage in the carport and kitchen, dye that spilled on the kitchen floor, wall and cupboards, a broken kitchen window, a black bear and the living room empty of all belongings except a desk and computer.

There was no dispute that on June 28, 2012 the landlord was issued an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent given to the tenants on June 3, 2012. The tenants did not dispute the Notice but remained in the rental unit beyond the effective date of the Notice. The decision issued on June 28, 2012 indicated that the landlord understood she did not yet have possession of the unit; however the tenants now confirm that they did relinquish possession later on that date.

There was no dispute that on June 24, 2012 the landlord entered the rental unit without issuing a Notice of entry. The tenants were not at the home; the landlord maintains the tenants had vacated. When the landlord entered the kitchen a blue dye substance that was placed over the door-way, spilled onto the landlord, down the cupboard and wall and onto the kitchen floor. Photographs showed the substance which appeared to have left stains on the cupboard, flooring, walls and the landlord's skin.

The tenants said that they did place this substance over the door, but that it was meant as a joke against a friend. The tenants said the liquid was just blue food colouring and not a hazardous material.

The landlord said that the 2 year old kitchen lino had to be replaced as the dye could not be fully cleaned. A November 14, 2012 invoice for flooring and installation was supplied as evidence. During my questioning of the details of the invoice the landlord confirmed that the invoice included costs for bathroom flooring. A breakdown of the flooring costs was not provided; although the total amount of the invoice had been claimed as kitchen flooring. The landlord estimated that the kitchen would constitute perhaps 2/3rds or maybe ¾'s of the cost incurred.

The landlord supplied a June 28, 2012 receipt for a new door knob and rat poison. The key left by the tenants was broken and unusable; the tenants left garbage lying around the unit, which resulted in the need for the rat poison. The tenants said that the key was about to break, that it was weak and that they did not break it on purpose.

The landlord supplied 2 June 30, 2012 receipts for a key blank, a package of 40 garbage bags, cleaning supplies, floor registers, a deck brush, a wood handle-roller and a wood wall bulvar thread totalling \$29.64 and \$80.30 which the landlord claimed as miscellaneous clean-up material. The landlord said that the unit was in need of cleaning.

Pictures showed garbage that had been torn apart in the carport; a bear problem had been occurring on the property. The tenants had been told to keep their garbage inside the home. The tenants said there no secure place to keep garbage outside.

The tenants said that shortly after the 11 a.m. hearing held on June 28 the female tenant arrived at the unit to retrieve their computer and discovered the broken kitchen window. The tenants pointed to 1 of the landlord's photographs which showed what the tenants believe, was a bear print on the cupboard. The tenants believe that a bear broke the window and torn apart the garbage they had left in the kitchen area; they denied having caused this damage.

At approximately 3 p.m., after the hearing held on June 28, 2012, the landlord discovered that the kitchen window had been broken and that garbage had been scattered in the kitchen. The landlord said that the tenants had broken the window and spread the garbage around the kitchen. The landlord supplied a hand-written note confirming the fee charged for boarding the window. The landlord supplied an invoice for glass replacement in the sum of \$160.78; the date on the invoice was illegible. The landlord said that a bear could not have fit through the window and that the tenants had purposely broken the window.

The tenants confirmed that they left a number of items of furniture behind for the use of future occupants. The landlord hauled these items to the dump; June 30, 2012 receipts for the dump fees were supplied in the totalling \$83.00.

The landord claimed an additional \$5,000.00 compensaiton for what they view as deliberate vandalism by the tenants. The landlord supplied a copy of an undated document from the RTB which indicated that a party may be fined up to \$5,000.00 for causing willful damage, if prosecuted. The landlord believes that the tenants intended to have the dye spill on her and that the intentionally broke the window.

The tenants submitted a claim equivalent to 1 month's rent for each of the 2 times the landlord entered their rental unit in breach of the Act. On a day in late May 2012 the landlord confirmed that she did enter the unit when she went to the property to retrieve a lawn mower. There was no dispute that, in the absence of the tenants, the landlord

entered the home and wrote a note in 1 of the children's school books; explaining she had been there to pick up the mower. Notice of entry had not been given to the tenant's.

The tenants said that the entries made to the unit, in May and again on June 24, 2012, when the dye spilled onto the landlord, constituted a loss of privacy and that they should be compensated in the sum equivalent to 1 month's rent for each illegal entry.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that an arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

In relation to the end date of the tenancy I find, pursuant to section 44(f) of the Act, that the tenancy ended on June 28, 2012, the date the tenants vacated. On June 28, 2012 the parties attended a hearing where the landlord requested an Order of possession, which I find expressed the landlord's lack of confidence that she had legal possession of the unit. The landlord did not need to serve the tenants with the order of possession as they then voluntarily relinquished possession.

The tenants were given a Notice ending the tenancy effective June 13, 2012; however, the tenants remained in the unit beyond the effective date of the Notice and did not give the landlord possession until June 28, 2012. As the tenants vacated at a late date, without providing the landlord assurance they would vacate in time for new occupants effective July 1, 2012; I find that the landlord suffered a loss of July 2012 rent revenue and that they are entitled to compensation in the sum of \$1,700.00.

There was no dispute that bears had become a problem on the property. There was no safe garbage storage offered on the property. The landlord supplied photographs which showed garbage in the car port; the result of bear activity. I find that the landlord was somewhat negligent in their failure to ensure, once the presence of bears was known, that the tenant had access to a secure, bear-proof garbage bin. Telling a tenant to keep garbage inside the home is not what I find was a reasonable solution.

The tenants did leave the garbage in the carport and in the kitchen; whether this was the result of bear activity or not; the tenant's had possession of the unit and were responsible for leaving the home reasonably clean.

From the photographic evidence I accept that the tenants did not sufficiently clean the home at the end of the tenancy. The invoices for miscellaneous cleaning included a claim for 40 garbage bags, an excessive number, and items that appear unrelated to cleaning. Therefore, in the absence of evidence that all items claimed were required for cleaning I find that the landlord is entitled to nominal compensation in the sum of \$60.00 for cleaning.

I find that the landlord is entitled to nominal compensation in the sum of \$1.00 for key replacement as the key was broken and I have rejected the tenant's claim, on the balance of probabilities that it was worn out.

There was no evidence before me that supported the landlord's claim the tenants were responsible for the presence of rats, that rats were a problem or that the tenants broke the door knob; therefore I dismiss the claim for those items.

The landlord has assumed that the tenants broke the kitchen window; the tenants raised what I found to be plausible cause; that a bear entered the kitchen via the window. The garbage scattered around the kitchen was in much the same state as that in the car port; leading me to find that the landlord did not, on the balance of probabilities, prove that the tenants broke the window. The tenants did realize the window had been broken and that garbage was in the kitchen, but they did not clean that garbage, which I have found was their responsibility.

Therefore, in the absence of proof that the tenants broke the window, I find that the claim for window replacement and boarding the window is dismissed.

In relation to the flooring, it was not until I questioned the landlord about the material and installation costs that it was revealed the flooring invoice included replacement of the bathroom floors, an area not damaged by the tenants. I found this omission a serious one, as I was initially led to believe that the total of the 2 flooring invoices was for the kitchen only. The landlord did not provide a breakdown of the cost for the kitchen flooring and during the hearing guessed it might be 2/3rds or perhaps ¾'s of the total cost.

I find, on the balance of probabilities, that the floor was damaged as a result of the dye the tenants placed over the door. Even though the substance was spilled as the result of what I find was illegal entry by the landlord, the tenants expected that someone would spill that dye; which could cause damage to the property. I have found that the tenancy did not end until June 28, 2012; therefore entry by the landlord on June 24, the date the dye spilled; required notice to the tenants; however, this does not relieve the tenants of responsibility for the damage caused.

Therefore, in the absence of a break-down of the cost for kitchen flooring and installation of the kitchen flooring I find that the landlord is entitled to compensation in a nominal sum of \$200.00. I have rejected the invoice as unreliable, as I have no confidence that the invoice reflected the cost of the kitchen floors.

The claim for willful damage referenced by the landlord appears to have been made as the result of dated information. The Act does allow the imposition of administrative penalties which are provided by section 94.1 of the Act. The process of assigning penalties is not contemplated via a dispute resolution hearing nor is it delegated to the

authority of an arbitrator; but is a separate process initiated by the Director. Therefore, I lack the delegated authority to consider this portion of the claim.

Therefore, the landlord is entitled to the following compensation:

| | Claimed | Accepted |
|---------------------------------|-------------------|-------------------|
| July 2012 rent revenue | \$1,700.00 | \$1,700.00 |
| Kitchen window replacement | 160.75 | 0 |
| Lock replacement and rat poison | 55.98 | 1.00 |
| Misc. Clean-up material | 80.30 | 60.00 |
| Dump fees | 86.00 | 86.00 |
| Boarding up kitchen window | 85.00 | 0 |
| Replace flooring | 1,387.37 | 200.00 |
| Flooring installation | 760.64 | 100.00 |
| TOTAL | \$4,316.04 | \$2,147.00 |

The balance of the landlord's claim is dismissed.

In relation to the tenant's claim for compensation, I find that the landlord did fail to provide proper notice of entry in compliance with section 29 of the Act. The landlord entered the home on 1 date in May 2012 and again on June 24, 2012; before possession of the unit was established. Therefore, I find that the tenants are entitled to a nominal sum of \$1.00 for each entry; the balance of their claim is dismissed. There was no evidence before me to justify compensation in the sum equivalent to 1 month's rent for each entry; an amount I found exorbitant.

As each application has some merit I decline filing fee costs to either party.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,145.00; the total has been reduced by the amount owed to the tenants. In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$2,147.00. The balance of the claim is dismissed or has not been delegated to an arbitrator.

The tenants are entitled to compensation in the sum of \$2.00; the balance of their claim is dismissed or was previously decided.

Filing fees are declined.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 05, 2013

Residential Tenancy Branch

