



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNDC, O
Tenant: MNDC, FF, O

Introduction

This hearing was reconvened as a continuation of two previous hearings. The first hearing dealt with an application for unpaid rent and an Order of Possession for unpaid rent. The Landlord was successful and received an Order of Possession and a Monetary Order for \$1,700.00 which represented unpaid rent of \$1,600.00 and the Landlord's filing fee of \$100.00.

The second hearing was adjourned as both the Landlord and the Tenants requested an adjournment to have time to review evidence, to prepare their claims and defences and for the Tenants to obtain a new lawyer to assist them.

Today's hearing is to deal with both parties' applications for monetary claims.

At the start of today's hearing the Landlord questioned if late evidence from the second hearing would be accepted into this hearing. I told the Landlord that all the evidence from the previous hearings and the new evidence packages submitted by both the Landlord and the Tenant would be accepted into evidence for today's hearing.

The Tenants indicated in their evidence package they were unable to obtain new counsel and they were going to represent themselves.

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants with respect to monetary claims.

The Landlord filed seeking, monetary compensation for damage to the unit, site or property, for monetary compensation for loss or damage under the Act, regulations or tenancy agreement and for other considerations.

The Tenants filed for monetary compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the filing fee and for other considerations.

The Tenants previously applied for access to the unit and for a reduced rent, but as the tenancy has ended these requested are no longer relevant and are therefore dismissed.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail in accordance with section 89 of the Act.

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Both parties confirmed the receiving the other parties' hearing packages and evidence packages.

Issues to be Decided

Landlord:

1. Is there damage to the unit site or property and if so how much?
2. Is the Landlord entitled to compensation for the damage and if so how much?
3. Is there a loss or damage to the Landlord and if so how much?
4. Is the Landlord entitled to compensation for loss or damage and if so how much?

Tenant:

1. Is there a loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?
3. Are the Tenants entitled to recover the filing fee \$50.00 from the Landlord?

Background and Evidence

This tenancy started on July 1, 2008 as a month to month tenancy and was a result of the Tenants employment with the Landlord. The female Tenant worked for the Landlord as a night supervisor and a part time Dietary Aide at the Landlord's retirement home business. Rent was \$800.00 per month payable in installments of \$400.00 each on the 1st and the 15th. The parties said the rent payment was deducted from the female Tenant's wages. There was no security deposit paid.

The Landlord said he has made this application because he believes the Tenants have breached a number of parts of the Residential Tenancy Act and the Policy Guidelines that are used to interpret the Act. The Landlord said the Tenants were issued a 2 Month Notice to End the Tenancy for Landlord's Use of the Property. The reason on the Notice was to convert the rental unit for the use of a caretaker, manager or superintendent of the residential property. As well the Landlord said compensation of one month's rent in the amount of \$800.00 was given to the Tenants as compensation for the tenancy ending. The Landlord said the Tenants cashed the check and did not dispute the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The

Landlord said the tenancy ended on November 22, 2012 as a result of a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord submitted a large amount of written evidence in which he alleges that the Tenants interfered with the Landlord's business and harassed and disrupted the residence of the retirement home and his staff. It is claimed by the Landlord that the Tenants tried to relocate residents of the Retirement Home to other retirement facilities. As well the Landlord said the Tenants harassed the Landlord, his staff and the residents of the retirement home with aggressive behaviour and foul language. It appears from the evidence that the relationship between the Landlord and the Tenants digressed and there were conflicts between them about many issues including business interference, the Tenant's storage area, hot water issues, air conditioning issues and harassment claims by both sides.

The Landlord's evidence shows that on October 10, 2012 the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent. The Landlord said the Tenants have moved out of the unit and have paid the rent after he served the Tenants the Order of Possession and Monetary Order from the last hearing.

The Landlord said the before the Tenants moved out of the rental unit they harassed the residents and staff of the Retirement Home to the point that the Landlord felt he had to hired a security company to monitor the situation at the Retirement Home and to investigate the Tenants behaviour. The Landlord has included in his evidence 6 affidavits attesting to the harassment and aggressive behaviour of the Tenants, a copy of the British Columbia Court Order restricting the female Tenant's action with respect to the Retirement Home, photographs to support the Landlords application, a sound recording of the female Tenant's abusing language and other letters and documents that that support the Landlord's claims. The Landlord's evidence also shows that the Landlord issued a 1 Month Notice to End Tenancy for Cause dated October 18, 2012. The reasons for the Notice to End Tenancy were repeated late rent payments, allowing unauthorized people to live in the unit, significantly interfering and disturbing other occupants and the landlord, seriously jeopardizing health and safety of the occupants of the rental complex, putting the landlord's property at significant risk, breaching a material term of the tenancy agreement and because the Tenant was no longer employed by the Landlord the unit need to be vacated. The Landlord said the situation with the Tenants behaviour was intolerable and he was concerned for the safety and well being of his staff and Retirement Home residences.

The Landlord said that as a result of his concerns about the safety of his staff and the occupants of the home he went to British Columbia Supreme Court and received an Order restricting the female Tenant and the alleged Occupant L.S. from communicating with staff and occupants of the Retirement Home and entering the complex. The Order also indicates the Royal Canadian Mounted Police and all Peace Officers in and for British Columbia shall enforce the terms of the Order. The Landlord said there were still some incidents between the Tenants and the staff and residences after the Court Order

was granted and the Security firm was hired. The Landlord said the security firm reported to him that the Tenants used abusive language to the officers.

The Landlord continued to say that because of the Tenants aggressive behaviour to him and to his staff and the occupants of the Retirement Home he has made the following monetary claim against the Tenants.

The Landlord said he is claiming the following:

1. The expense of hiring the security firm from October 12, 2012 to November 22, 2012 at a cost of \$11,990.24. The Landlord submitted time sheets and paid invoices for the security company costs.
2. The Landlord said the management company he employs had to do work that was outside their contract and as a result the management company billed the Landlord for extra time to monitor and deal with issues resulting from the Tenants actions. The Landlord submitted a paid invoice for the management company's bill for \$6,720.00 which is included in the Landlord's evidence package. It should be noted that in the Management Company's affidavit it indicates the company specializes in management and administration of retirement home facilities.
3. The Landlord said he is also claiming \$1,500.00 for the Tenants' guest L.S. living in the rental unit without authorization. The Landlord called a Witness M.W. to attest to the Tenants' guest living in the rental unit from sometime in June, 2012 to sometime in November, 2012. The witness indicated that the Tenants' guest was at the rental unit a lot of the time including early in the mornings and late at night and on consecutive days, but the Witness M.W. said she was not sure if the Tenants' guests were actually living in the unit. The Landlord said the Tenants' guests were receiving their mail at the Tenants' rental unit and her children were there many times when she was not. As well the Landlord said the Tenants' guest claims to have rented her own unit, but she has not provided proof that she did have a rental unit that she lived in. The Landlord's written evidence indicates his staff first notices the alleged occupants in the rental unit in June, 2012 when it was reported to the manager and then the manager reported the alleged occupants to the Landlord in August, 2012. The evidence does not indicate any correspondence between the Landlord and the Tenants about authorized occupants in the rental unit until the 1 Month Notice to End Tenancy for Cause dated October 18, 2012.
4. The Landlord continued to say he is also requesting the return of the compensation that the Tenants were given in the amount of \$800.00 with the 2 Month Notice to End Tenancy for Landlord's Use as the Tenants were evicted due to non payment of rent and because they continued to harass the staff and residences of the Retirement Home until they moved out.

5. The Landlord said his final claim is for his time and expenses in dealing with the Tenants harassment and aggressive behaviour towards himself, his staff and the residences of the Retirement Home. The Landlord said he is claiming \$2,289.76 for his time and expenses.

The Landlord said his total monetary claim against the Tenants is \$23,300.00.

The Tenant said that they had accepted the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 12, 2012 and they accepted the \$800.00 as compensation for that Notice to End Tenancy. The Tenants expected the tenancy to end on November 30, 2012. The Tenant said they did not pay the October and November, 2012 rent and as a result they received a 10 Day Notice to End Tenancy for Unpaid rent. The Tenants said they complied with the Decision of November 19, 2012 hearing, which required them to vacate the rental unit 2 days after the Order of Possession was served on them and they paid the Landlord \$1,700.00. The Tenants said they vacated the rental unit by November 22, 2012.

The Tenant continued to say that the Landlord continuously harassed them from mid September to when they moved out on November 22, 2012. The Tenant provided a witness L.S. to give testimony with regards to the Landlord's harassment and to give testimony that she was not residing at the Tenants rental unit as alleged by the Landlord.

Witness L.S said she had her own rental unit and she provided a copy of her lease agreement and a letter from her landlord indicating the tenancy was from June 1, 2011 to August 31, 2012. As well the Witness L.S. provided a letter indicating that she and her two children lived at the home of S.C. from September 1, 2012 to December 1, 2012. Neither the previous landlord nor the person S.C. who wrote the letter appeared at the hearing and neither of the written statements were notarized.

The Witness continued to say that the Landlord was at the Tenants house weekly if not more often delivering documents or letter and harassing the Tenants each time he came to their rental unit. The Witness L.S. said she was at the Tenants rental unit a lot of the time because they were helping to look after her children when she was at physical therapy. The Witness L.S. said she was at the Tenants' unit daily and she slept over on occasions. As well the Witness L.S. said she changed her mailing address to the Tenants' address because of difficulties receiving her mail at her own address. The Witness L.S. said she also worked for the Landlord and was named on the restraining Order not to enter the retirement home or communicate with Retirement Home staff. The Landlord said that the Witness L.S. was living at the Tenants' rental unit and the Witness's mailing address at the Tenants rental unit proves it to be true.

The Tenant continued to say they had requested that the Landlord do repairs to the air conditioning and the hot water in their unit. The Tenant said these repairs were not done. The Landlord said he had contacted the Tenants to make the repairs, but the Tenants did not cooperate with his requests.

The Tenant said that as a result of a letters received from the Retirement Home company restricting her entry to the retirement home and the Court Order prohibiting the female Tenant from the retirement facility the Tenant said she could no long use the laundry facility and their storage facility. The Tenant said both these items were part of the tenancy agreement. The Tenant said as a result of the loss of use of the laundry and their storage area they are claiming compensation. The Tenant said they are claiming \$350.00 for laundry expenses for the time between September 6, 2012 to November 22, 2012 and the amount of \$200.00 for replacement storage costs for the same time period. The Tenant said she thought she had included receipt for the laundry expenses and replacement storage costs in the evidence package, but she was unable to find any receipts during the hearing. On review of the evidence after the hearing I was not able to find any receipts for the laundry expenses or storage expenses.

The Tenant continued to they are also claiming \$4,800.00 for harassment and loss of quiet enjoyment of the rental unit from September to November, 2012. The Tenant said they calculated the \$4,800.00 by taking half a month's rent of \$400.00 for 12 months, which equals \$4,800.00.

As well, the Tenant included letters from previous employees of the retirement home, photographic evidence, an employment letter from the retirement home and copies other documents that support the Tenants application.

The Tenant said in closing that the Landlord's claim is not a tenancy issue but resulted from her employment at the Retirement Home and that the Landlord has started an action in the court system and that is where this should be settled.

The Landlord closed his remarks by saying the Tenants behaviour has been aggressive and hostile to him, his employees and to the Residence of the Retirement Home. The Landlord said his evidence shows the Tenants were aggressive and harassed the employees and residence of the Retirement Home and he believes he should be awarded compensation for the losses that he incurred because of the Tenants behaviour and actions. The Landlord said he felt he had to hire the Security Company and pay the extra time to the Management Company to ensure the safety of his employees and the residence of the Retirement Home.

Analysis

This tenancy dispute started when the Landlord issued a 2 Month Notice to End the Tenancy for the Landlord's Use of the Property. The reason the Landlord gave the Tenants was that he was using the rental unit for a caretaker, manager or supervisor. The Landlord paid the Tenants the equivalent of one month's rent in the amount of \$800.00. The Landlord submitted a copy of the canceled cheque as evidence that the

Tenants received the correct compensation for issuing the Notice to End the Tenancy. The Tenants agreed to the Notice and accepted the compensation. The Landlord has now applied to recover the \$800.00 in compensation because the tenancy actually ended due to unpaid rent. The Landlord and Tenants both said the rent for October and November, 2012 was not paid and the Landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 10, 2012. The Landlord has since been successful in obtaining an Order of Possession and monetary order for the unpaid rent. Consequently I find the tenancy ended due to Unpaid Rent and not for the reason of the Landlord's Use of the property; therefore I find for the Landlord and award the Landlord \$800.00 to recover the compensation that was give to the Tenants under the 2 Month Notice to End the Tenancy for the Landlord's Use of the Property.

The Landlord has also applied for \$1,500.00 for additional rent due to unauthorized occupants living in the Tenants rental unit. The Landlord said he is claiming \$250.00 for each of the six months he believes the occupants were in the rental unit. As evidence of the unauthorized occupants the Landlord provided a Witness M.W. to testify. The Witness M.W. said she saw the unauthorized occupants in the rental unit during the day and in the night time, but she testified that she could not say for sure that the unauthorized occupants were living in the rental unit full time. The Landlord said the unauthorized occupants were receiving mail at the rental unit and this is proof that they were living in the unit. An employee reported the unauthorized occupants to the manager in June 2012 and the manager reported the unauthorized occupants to the Landlord in August, 2012.

The Tenant said the alleged unauthorized occupants were friends who visited a lot. The Tenant provided the alleged unauthorized occupant to testify as a witness and the alleged unauthorized occupant provided a tenancy agreement and letter from a person who indicated the alleged unauthorized occupant and her children lived with her during the time the Landlord said she was living in the Tenants rental unit. The alleged unauthorized occupant said she did not live in the unit although she did receive her mail at the Tenants address.

From the evidence and testimony provided it appears that the Landlord knew about the alleged unauthorized occupant since June 2012, but only provided a written warning about the unauthorized occupants with the 1 Month Notice to End Tenancy for Cause dated October 18, 2012. Given that the Landlord Witness M.W. was unsure if the alleged unauthorized occupants were living full time in the Tenants' rental unit and that the Landlord did not give a written warning to the Tenants about unauthorized occupants until October 18, 2012, I find the Landlord has not established grounds to be

awarded compensation of \$1,500.00 for additional occupants in the rental unit. I dismiss the Landlord's claim for \$1,500.00 without leave to reapply.

As the dispute heard today is a monetary claim by both the Landlord and Tenant and both parties were told in the second hearing dated January 7, 2012 and again during the hearing of February 4, 2013 that for a monetary claim to be successful an applicant must prove the following:

For a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

In addition section 7 (2) of the Act says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord is claiming \$11,990.24 for security expenses to maintain a safe environment for the Retirement Home and for his employees. The Landlord says he has proven a loss and verified the loss by providing paid receipts from the Security Company. I accept that the Landlord has incurred costs by providing paid receipts totaling \$11,990.00. The Landlord continued to say these costs were incurred solely because of the Tenants actions. The Landlord had a number of options available to him to secure the safety of his employee and the Retirement Home. The Landlord could have called the police as the Court Order says if the Tenants' behaviour threatened an employee or resident of the Retirement Home. In addition the Landlord could have applied for an Early End to Tenancy if he believed it was unreasonable to wait for a decision on one of the 3 Notices to End Tenancy that the Landlord issued. Applications for an Early End to a Tenancy are a priority application with the Residential Tenancy Branch and are normally heard within 7 days of the application. In this situation the Landlord chose to hire a Security Company to monitor the Retirement Home and the Tenants. The Landlord was aware this would cost a considerable amount. I understand the Landlord believed this was his best option, but the Act is very clear that a claimant has to do whatever is reasonable to minimize the loss or damage which in this case is the cost of the Security Company. I find that hiring the Security Company did not mitigate or minimize the Landlord's loss given that there were other options to secure the safety of the Retirement Home. It was the Landlord's choice to hire the Security Company and therefore it was not solely a result of the Tenants' actions in

violation of the Act that the Landlord incurred these expenses. Therefore I dismiss the Landlord's claim for the recovery of the Security Company costs of \$11,990.24 without leave to reapply as the Landlord did not mitigate or minimize the loss.

The Landlord is also claiming that the Management Company did extra services to monitor and to deal with the Tenants and incidences caused by the Tenants which resulted in extra costs that the Landlord was billed for in the amount of \$6,720.00. The Landlord provided a paid invoice from the Management Company establishing the costs to the Landlord, but again the Landlord chose to have the Management Company perform these services at considerable costs. I again find the Landlord did not mitigate or minimize the loss or damage. The Landlord made the choice to expand the Management Companies services from the original contract and therefore it was not solely a result of the Tenants actions in violation to the Act that caused the Landlord to have a loss. I dismiss the Landlord's claim without leave to reapply, to recover the cost of the extra work the Management Company did in the amount of \$6,720.00.

With respect to the Landlord's claim for reimbursement for his time to manage his property and to make this application in the amount of \$2,289.76, I find those costs are part of any Landlord's duties and the Landlord has not documented or quantified the costs beyond a lump sum of \$2,289.76; therefore I find the Landlord has not established grounds to be awarded his claim of \$2,289.76 for his time and expenses. I dismiss the Landlords claim of \$2,289.76 for time and expenses without leave to reapply.

The Tenants have made the claim for \$350.00 for laundry expenses and \$200.00 for storage expenses, but neither of these claims are proven and verified by receipts; therefore I dismiss both claims on the grounds of lack of evidence. I dismiss the Tenants' laundry claim of \$350.00 and the storage claim of \$200.00 without leave to reapply.

The Tenants have also claimed \$4,800.00 for harassment and loss of quiet enjoyment of the rental unit. The Tenants said they calculated the claim as \$400.00 per month over the last 12 months. From the Tenants' evidence and testimony it appears that the dispute started in September, 2012 and the Tenants moved out of the rental unit in November, 2012 so the dispute happened over two months. It appears the Tenants are claiming compensation for 12 months on a dispute that occurred over 2 months. As well I find from the evidence submitted by the Landlord in the form of letters and affidavits shows that the Landlord has complied with the Act on the requests that the Tenants made. Consequently I find the Tenants have not established grounds to support their claim for harassment and loss of quiet enjoyment in the amount of

\$4,800.00. I dismiss the Tenants claim for harassment and loss of quiet enjoyment in the amount of \$4,800.00 without leave to reapply.

As the Tenants have been unsuccessful in this matter I order the Tenants to bear the filing fee cost of \$50.00 that they have already paid.

Conclusion

A Monetary Order in the amount of \$800.00 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants application is dismissed without leave to reapply.

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: February 07, 2013

Residential Tenancy Branch

