



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF / MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / compensation reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from December 15, 2009 to December 31, 2010. Thereafter, tenancy continued on a month-to-month basis. Monthly rent of \$970.00 and parking of \$20.00 were both payable in advance on the first day of each month. A security deposit of \$485.00 was collected on November 30, 2009. While the parties agree that a move-in condition inspection was completed near the outset of tenancy, there is no move-in condition inspection report in evidence.

On October 1, 2012, the tenants gave notice to end tenancy effective October 31, 2012. A move-out condition inspection and report were completed with the participation of both parties on October 30, 2012, and a copy of the report is in evidence. The tenants provided their forwarding address in writing on the move-out condition inspection report. Thereafter, the landlord filed an application for dispute resolution on November 9, 2012.

New tenants were found for the unit effective from on or about January 16, 2013. The landlord's agents testified that advertising for new renters is an ongoing process which is undertaken via 2 or 3 separate on-line sites, including craigslist. Further to that, the landlord's agents testified that signage is posted in relation to current vacancies.

Prior to the end of tenancy, on or about October 12, 2012 the landlord forwarded a plumbing invoice to the tenants for payment. The charge was incurred for clearing a hair blockage from the drain of the vanity sink in the unit. While the invoice was for services provided by a plumber on or about August 28, 2012, it bears a date stamp which appears to indicate that the landlord received the invoice on October 6, 2012. The tenants consider that this cost ought to be borne by the landlord.

Finally and also prior to the end of tenancy, on October 17, 2012 the tenants notified the landlord that their fridge / freezer was not fully functioning. The landlord replaced the fridge / freezer on October 18, 2012. In the meantime, the tenants claim there was a quantity of food and drink in the fridge / freezer which spoiled and had to be discarded, and that the replacement fridge required cleaning both inside and out. The landlord questioned whether the tenants had undertaken any measures to mitigate their loss, such as bringing in ice or making an insurance claim. The tenants testified that the amount of the deductible on their insurance policy made a claim impractical.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, the various aspects of the respective claims and my findings around each are set out below.

LANDLORD:

\$995.00: loss of rental income for November 2012.

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that notice given by the tenants on October 1, 2012 to end tenancy effective October 31, 2012, does not comply with the above statutory provisions, and the parties agreed that the amount due effective from November 1, 2013 was \$995.00.

Section 7 of the Act addresses **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) 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.

In the absence of any documentary evidence from the landlord in support of efforts that may have been undertaken to find new renters, I find that the landlord has established entitlement to loss of rental income for November 2012 limited to **\$497.50** ($\$995.00 \div 2$).

\$79.10: plumbing invoice.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In the absence of any evidence that the flow from the subject drain was problematic at the start of tenancy, I find on a balance of probabilities that blockage from buildup of hair arose principally from the tenants' use of the sink beginning from the time when tenancy began nearly 3 years earlier. In the result, I find that the landlord has established entitlement to recovery of the full amount claimed.

\$50.00: filing fee.

As the landlord has achieved more than a nominal measure of success, I find that the landlord has established entitlement to recovery of the full filing fee.

Sub-total: \$626.60 (\$497.50 + \$79.10 + \$50.00)

TENANTS:

\$970.00: double return of security deposit (2 x \$485.00).

Section 38 of the Act addresses **Return of security deposit and pet damage deposit.**

In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, the tenants provided their forwarding address in writing on October 30, 2012, and the landlord filed an application for dispute resolution on November 9, 2012, which is within 15 days later. Accordingly, I find that the tenants have not established entitlement to compensation reflecting the double return of their security deposit, and this aspect of their application is therefore dismissed.

\$100.00: estimated value of spoiled food.

By way of their actions, I find that the landlord acknowledged the need to replace the fridge / freezer and I consider that the fridge / freezer was replaced in a timely manner.

There is no evidence of receipts related to the purchase of any of the foodstuffs identified as spoiled, and there are no photographs of any foodstuffs which may have been discarded. Further, there is no clear evidence that the tenants reported this loss to the landlord until after the tenancy ended.

In relation to allegedly discarded foodstuffs and the relatively minor inconvenience arising from the replacement and cleaning of the fridge / freezer, I find on a balance of probabilities that the tenants have established entitlement limited to **\$25.00**.

\$50.00: filing fee.

As the tenants have achieved only a nominal measure of success, I find that they have established entitlement limited to recovery of **\$25.00**, or half the filing fee.

Sub-total: \$50.00 (\$25.00 + \$25.00)

Offsetting the respective entitlements, I find that the landlord has established a net entitlement of **\$576.60** (\$626.60 - \$50.00). I order that the landlord retain the tenants' security deposit of **\$485.00**, and I grant the landlord a monetary order for the balance owed in the amount of **\$91.60** (\$576.60 - \$485.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$91.60**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court 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: February 15, 2013

Residential Tenancy Branch

