



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlords' application of December 12, 2012 seeking a monetary award for unpaid utilities, loss of rent, damage to the rental unit, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

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.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenants, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Claims for damage or loss under the legislation or rental agreement require that the claimant make reasonable effort to minimize the loss. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on September 1, 2012 under a three-month fixed term rental agreement with the provision that the tenants must vacate at the conclusion of the tenancy on November 30, 2012, duly initialled by both parties.

Rent was \$1,000 per month and the landlord holds a security deposit of \$500 paid at the beginning of the tenancy.

As a matter of note, this tenancy was the subject a hearing on December 3, 2012 in which the arbitrator upheld the end date set by the fixed term agreement. However, by the time of the hearing, the tenants had already vacated.

In the present application, the landlord seeks, and I find as follows:

Loss of rent for December 2012 - \$1,000. The landlord submitted into evidence a copies of an email exchange with the tenants dated October 29, 2012. In her email, the landlord refers to previous conversation with the tenants in which she reminded them of the need to move by November 30, 2012 in compliance with the fixed term agreement. The female tenant replied expressing her preference that the unit not be shown until an end date had been set at the then pending hearing of December 3, 2012 and indicates the landlord would be welcome to show the unit on 24-hour notice after that decision.

The landlord stated that she had to cancel showings for November 3, 2012 to two potential tenants, prospects that had been found from her advertising on a popular internet classified advertising site. She subsequently advertised in a local bi-weekly newspaper, but was unable to find tenants for December 2012.

I find that by moving before November 30, 2012, the tenants did not breach the rental agreement; however, by their refusal to accommodate the showing of the rental unit, they contributed to the landlord's loss of rent for December 2012. I note that the landlord had a right to enter the unit on 24-hour notice without the tenants' consent, but I find that the landlord should not be penalized for acting in a manner to avoid confrontation or cause anxiety for the tenants.

I find that by refusing to leave until a hearing on December 3, 2012 to settle a point already established by the rental agreement, the tenants caused the landlord a loss that is akin to over holding, a breach for which the remedy is the per diem loss for each day of over holding. Given that the hearing was set for December 3, 2012 and the Order of Possession was issued to take effect two days later after service, I find that the tenants owe to the landlord five days of the lost rent.

At a per diem calculated as \$1,000 divided by 31 days in the month equals \$32.26 x 5 days, I find the tenants owe \$161.29 for loss of rent.

Hydro bill - \$201.89. The tenant's advocate stated she had examined the landlords' claim and concurrent. The claim is allowed.

Water bill - \$46.97. As with the hydro bill, the tenants' advocate agreed with the claim and it is allowed.

Replace broken light fixture - \$88.14 . This claim was support by a receipt for \$68.14 and includes an additional claim for \$20 for installation time. The tenants' advocate agreed with the clam and it is allowed.

Gardening - \$72.00. The tenants' advocate concurred with this claim which was supported by numerous photographs, the rental agreement and a paid receipt. The claim is allowed in full.

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

Security deposit – (\$500). As authorized by section 72 of the *Act*, I order that the landlords retain the security deposit in set off against the balance owed.

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

Loss of rent for December 2012	\$161.29
Hydro bill	201.89
Water bill	46.97
Replace broken light fixture	88.14
Gardening	72.00
Filing fee	<u>50.00</u>
Sub total	\$620.29
Less retained security deposit (No interest due)	- 500.00
TOTAL	\$120.29

Conclusion

In addition to authorization to retain the security deposit in set off against the balance owed, the landlord's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$120.29** for service on the tenants.

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: March 08, 2013

Residential Tenancy Branch

