



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, MNSD, and FF

Introduction

The hearing was convened on the landlords' application of December 31, 2012 seeking a monetary award for unpaid rent/loss of rent, utilities, 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.

Despite having been served with the Notice of Hearing sent by registered mail on January 2, 2013 to an address for service provided by the tenant, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issue(s) to be Decided

This application requires a decision on whether the landlords are entitled to a monetary award for the claims submitted.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

Background and Evidence and Analysis

This tenancy began on July 1, 2011 and by the tenant's late notice given verbally on July 1, 2012 was to end on July 31, 2012, although she did not give up vacant possession until August 4, 2012. Rent was \$600 per month and the landlord held a security deposit of \$300, applied without consent against the July 2013 rent by the tenant.

This matter is somewhat confused by the fact that the rental agreement named two tenants, indicating a co-tenancy. However, the tenants had joined the tenancy independently and each had paid a security deposit of \$300 and \$600 monthly rent separately and had operated as tenants in common. The other tenant had left earlier.

The landlords stated that the applicant tenant had not provided a forwarding address until they received a letter dated December 17, 2012 demanding that they return \$170 of the security deposit paid by the other tenant. The letter gave a forwarding address of a local advocacy society.

Consequently, the landlords submitted the present application.

Rent/loss of rent – \$1,200. The landlords noted that \$1,200 was the full rent for both tenants constituting their loss of rent for August 2012. However, given the confusion over the distinction between co-tenants and tenant's in common, they asked to reduce this claim to the four days per diem to August 4, 2012 during which the applicant tenant's belongings remained in the rental unit. I find that the landlords are so entitled and allow $(4/31 \times \$600) = \77.42 on this claim.

Security deposit - \$300. As noted, the tenant improperly withheld \$300 from the July 2012 rent and the security deposit is not available for offset. I find that the respondent tenant has no entitlement to the security deposit paid by the other tenant. The landlords submitted a copy of the respondent's security deposit cheque dated July 1, 2011.

Refinish oak floors - \$361.20. The landlords claim this portion of a total billing of \$1,772.40 for refinishing the hardwood floor in the rental building. They submitted photographs showing deep gouges in the parts of the floor, apparently caused when the respondent moved out, and about which she commented, “sorry about that” when the gouges were pointed out to her.

Repair fireplace insert - \$141.11. By addendum to the rental agreement, the tenant had agreed to use only “cord wood” in the fireplace insert in order to comply with the manufacturer’s instructions. A letter from the repairer stated that the stove was only two years old but showed wear and rust equal to 10 years use because of improper use and required a new handle. The landlord stated it had burned so hot, it had welded a bolt and screw to the door. The balance of the claim is for chimney cleaning which the tenant agreed to have done by addendum to the rental agreement. The claim is supported by paid receipts and it is allowed in full.

Refuse removal, dump fees – \$38.25. On the basis of two paid receipts and the evidence of the landlords, this claim is allowed in full.

One-half water bill from May 1/12 to Aug. 31/12 – \$39.77. The landlords submitted a copy of the bill for \$79.54 in support of this claim and it is allowed in full.

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

Rent/loss of rent	\$ 77.42
Refinish oak floors	361.20
Repair fireplace insert	141.11
Refuse removal, dump fees	38.25
One-half water bill from May 1/12 to Aug. 31/12	39.77
Filing fee	50.00
TOTAL	\$707.75

Conclusion

The landlords' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$707.75** for service on the tenant.

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 20, 2013

Residential Tenancy Branch

