



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

An extensive amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Other than a small amount of testimony which was given by the parties at the hearing, both the landlords and the tenants stated that they were satisfied that they had sufficiently and accurately presented their cases in their written submissions.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants, and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a Monetary Order for \$8945.00 and a request to retain the full security deposit of \$1250.00 towards the claim.

The tenant's application is a request for a Monetary Order for \$8727.66 and a request for an order for the return of the security deposit.

Background and Evidence

This tenancy began on March 1, 2010, and the tenants vacated the rental unit on October 22, 2010.

The monthly rent was \$2500.00, and a security deposit of \$1250.00 was paid on January 30, 2010.

The tenants moved out of the rental unit on October 22, 2010.

It is the landlord's position that:

- This rental unit was fully renovated and ready for the tenants to move in by February 28, 2010. There were only some minor last minute finishing touches that needed to be done that would in no way interfere with the tenants moving into the rental unit.
- Right from the beginning of the tenancy the tenants had difficulty paying the rent on time, and every month, other than the month of May, the rent payment was late.
- The August 2010 rent was never fully paid, \$1000.00 of the August 2010 rent was paid on September 16, 2010, and another \$1000 was paid on September 18, 2010, leaving \$500.00 still outstanding.
- The September 2010, and October 2010 rent was never paid.
- The tenants kept making excuses that they were having financial difficulties, and we have provided voice recordings in which the tenants discuss their financial difficulties and promises to pay the outstanding rent.
- On October 5, 2010 they received a voicemail from the tenants stating that they would be moving out, however no written Notice to End Tenancy was received.
- October 6, 2010 we met with the tenants and expressed our concerns over the outstanding rent and asked them why they hadn't given 30 days written notice and at that time the tenant stated they did not know they had to give 30 days notice. We inform the tenants that they still had to give 30 days notice.
- The relationship with the tenants was deteriorating and we were worried that we would never get the outstanding rent and therefore on October 15, 2010 we served the tenants with a 10 day Notice to End Tenancy for unpaid rent.
- The tenants did not move within the 10 days, but instead filed for dispute resolution for a monetary claim approximately equal to the amount that they owed us in outstanding rent and damages.
- The tenants failed to properly serve the notice of hearing, and we found it lying on the ground near our front steps when we returned home on October 27, 2010 along with a fraudulent letter entitled one-month Notice to End Tenancy which

was backdated to September 30, 2010. This was the first time we received a copy of this letter.

- When the tenants did finally vacate, they refused to respond to a request for a move-out inspection.
- After the tenants moved out we found extensive damage to the rental unit.
- Bedroom walls had holes from shelving, and hallway walls were marked and scraped.
- There was extensive damage on the moldings throughout which had to be repaired and repainted.
- The downstairs living room carpet was severely damaged and stained with cat urine and had to be replaced. The carpets were dirty and stained throughout and had to be cleaned and a mattress was left behind and had to be disposed of.
- The tenants had failed to report a major leak in the laundry area and as a result the flooring in the laundry area was damaged and had to be replaced.
- They were also unable to re-rent the unit for the month of November 2010 due to the short notice, and need for repairs and cleaning.
- They are therefore requesting a Monetary Order as follows:

August 2010 rent outstanding	\$500.00
September 2010 rent outstanding	\$2500.00
October 2010 rent outstanding	\$2500.00
November 2010 lost rental revenue	\$2500.00
1/3 of landlord's labor for cleaning and repairs.	\$845.00
Filing fee	\$100.00
Total	\$8945.00

We have not submitted the cost of materials used because we had most of the materials on hand from the initial house renovation.

It is the tenant's position that:

- The August 2010 rent was paid in full, although it was paid late.
- \$1000.00 of the September rent was paid, leaving only \$1500.00 unpaid.
- They did not pay any October 2010 rent.
- At the end of September 2010 we gave the landlord's written notice that we would be ending the tenancy at the end of October 2010.
- They do not believe they should have to pay anything further to the landlords and in fact believe that the landlords should be compensating them.
- The house was not ready for them to move in on February 28, 2010 and in fact the landlords asked them if he could have a few more days to complete the inside of the house, and therefore we agreed to stay in a hotel for a few days.

- When we finally did come to move in on March 2 the house was still not ready and in fact they had to endure ongoing renovations throughout the tenancy and as a result did not have full use of the rental unit.
- Because the house was not ready to move into they had to place a number of their items into storage adding an extra cost.
- Only a portion of the downstairs was completed and the work crews had materials and equipment stored in the downstairs living room and kitchen area as well as in the garage and the yard.
- Because there was no room to store things they also had to increase the size of their storage unit at even more cost.
- They had to endure ongoing renovations that were never fully completed inside or outside and had to put up with work crews coming and going throughout the tenancy.
- Their two boys did not have access to the full downstairs until the end of April and could not use the bathroom because the work crews were using the bathroom to clean brushes and other items.
- As a result of the ongoing work we told the landlords we did not believe we should be paying the full rent, however the landlords did not take the request seriously.
- In desperation we even offered to help complete the work and in fact our two boys help do landscaping and construction on the property.
- The landlords failed to give us rent receipts, however after asking several times we finally received receipts for March April and May. We receive no receipts after that.
- The last three months of the property became strained and we were also experiencing financial hardship of our own through the months of July and August, and communication began to break down and become more negative.
- As we knew we would not be able to come to a fair resolution regarding the rent with the landlord we decided to apply for dispute resolution.
- We moved out of the property on 20 October and completed the cleaning on October 22 and called the landlord several times to return the keys and do the final walk-through however after not getting a response we delivered the keys to the landlord's place of residence.
- We are requesting the landlords application be denied, and are requesting a Monetary Order as follows:

Rebate of BC Hydro costs due to contractors using their electricity	\$150.00
Hotel costs due to delay of move	\$616.99
Extra U-Haul truck rental fees due to delay	\$320.09

in move-in	
Tire repair due to nails left in driveway	\$42.67
Truck and fuel use for three days by landlord	\$250.00
Rent overpayment for March and April as did not have use of the lower portion of the house	\$2500.00
Construction credit of \$500 a month for May through October	\$3000.00
Storage unit costs	\$1508.00
Peters labor to assist pouring concrete	\$240.00
Filing fee	\$100.00
Total	\$8727.75

In response to the tenant claims the landlord's state:

- They have provided a sworn declaration from the contractor that worked on the rental property that states that the house was ready to be occupied on February 28, 2010.
- They provided audio recordings of the tenant stating he has financial difficulties and would pay the rent as soon as possible and there is no mention on those recordings of problems with the rental unit.
- The sworn declaration from the contractor also points out the repairs he did after the tenants moved out of the rental unit.
- They believe that tenant's claim is fully fabricated to try and cover the outstanding rent that they failed to pay due to their financial difficulties.

Analysis

Landlord's application

It's my finding that the tenants have not met the burden of proving that they paid the full August 2010 rent, or that they paid any rent in the month of September 2010.

The tenants claim to have paid the full August 2010 rent and a large portion of the September 2010 rent; however they have provided insufficient evidence in support of these claims. There were also inconsistencies between the tenant's verbal testimony, and the written submissions. At the hearing the tenant stated they did not suffer any financial difficulties, however in the written statement they state "*the last three months*

living at the said property became strained to the breaking point as we also experienced financial hardship of our own in the months of July and August”.

Further although the tenant son states in his written submission that he was present when rent was paid in cash to the landlord, that submission does not state how much was paid, nor is there any evidence to show what month those payments were for, and therefore the statement has little evidentiary value.

I therefore accept the landlords claim that the tenants owe \$500.00 for the month of August 2010, the full September 2010 rent of \$2500.00, and the full October 2010 rent of \$2500.00. I therefore allow those portions of the landlords claim.

I also allow the landlords claim for lost rental revenue of \$2500.00 for the month of November 2010 as I am not convinced that the tenants served the landlord with a one-month Notice to End Tenancy. In the voicemail left by the tenant in the month of October 2010 the tenant states that it's their intention to move at the end of October 2010, and I find it unlikely that the tenants would need to have included that statement in the recording had they actually served a one-month Notice to End Tenancy in the month of September 2010.

I therefore except the landlords claim that they did not receive the one-month Notice to End Tenancy that was provided in the hearing package, until October 26, 2010.

It is also my finding that the landlord has shown that this rental unit was left in need of substantial cleaning and repairs. The photo evidence provided by the landlords clearly shows the damage that existed, and that evidence is supported by the sworn declaration from the contractor who did the repairs.

Having allowed the landlords full claim, I also allow the recovery of the \$100.00 filing fee.

Tenant's application

It's my finding that the tenants have not met the burden of proving the majority of their claim against the landlords.

I do not accept the tenants claim that the rental unit had multiple deficiencies and that they were unable to move into the rental unit when originally planned.

The photo evidence provided by the tenant does not support their claim that there were major deficiencies in the rental unit, and in fact the photos show mostly minor cosmetic issues, and certainly nothing that would prevent the tenants from moving into the rental unit.

Further there are some inconsistencies in the photos; the tenants have shown a photo of the front of the house that shows that there is no light fixture installed to the right of the garage/storage area door, however in another of the tenants photos that shows the door open, you can clearly see the light fixture is installed.

It's also my finding that the landlord has shown that some of the tenants statements are clearly false. On the tenants written statement of events they state that when they moved in, the upstairs kitchen was incomplete (no fridge, stove and the cupboard still needed to be installed). The landlord however has provided evidence from the kitchen cabinet installer confirming that the installation was complete by February 23, 2010, well before the move in date.

The tenants claim that the laminate flooring was not installed downstairs, however the landlords have supplied evidence that shows pictures prior to the renovation and after the renovation, and the same laminate flooring is in both pictures. I therefore accept the landlords claim that the laminate flooring was in well before the tenants were to move into the rental unit.

The landlord has also pointed out inconsistencies in the tenants statements regarding the moveout inspection. In the tenants Letter of Notice it states *"we will call to make arrangements for the final walk-through at which time we will fill out inspection report together."* In the tenants original statement of events from November 2010 it states *"there was never an initial inspection report when we moved in so we did not do one as we left either. We think the pictures we have taken should suffice."* and then finally in the tenants second statement of events from January 2013 it states *"we called Mr. H. several times to return the keys and do a final walk-through" "we made several attempts to complete a moveout inspection with no luck and took photos instead."*

In light of the inconsistencies and inaccuracies in the tenant's statements, it is my decision that I prefer the testimony and evidence of the landlords over that of the tenants, and I will not allow any of the tenants claim, except for the claim for return of the security deposit.

There is no evidence to show that the landlords did a move in inspection or produced a move in inspection report as required by the Residential Tenancy Act, and therefore

pursuant to section 24(2) the landlords have extinguished their right to file a claim against the security deposit. Since the landlord did not have the right to file a claim against the security deposit, the security deposit should have been returned within 15 days of the end of the tenancy, or the date that they received a forwarding address in writing. The landlords admit to having received a forwarding address in writing on November 9, 2010.

Further, the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit and did not have the right to apply for dispute resolution to keep any or all of tenant's security deposit.

As stated above this tenancy ended on October 22, 2010, and the landlord had a forwarding address in writing by November 9, 2010, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

The tenants paid a deposit of \$1250.00, and therefore the landlords must pay \$2500.00.

I will also allow 1/2 of the tenants claim for the filing fee, as they have still established a fairly significant claim.

Therefore the total amount I allow in the tenants application is \$2550.00.

Conclusion

I have allowed the landlords full claim of \$8945.00.

I have allowed \$2550.00 of the tenants claim, and the remainder of the tenants claim is dismissed without leave to reapply.

I have therefore set off the amount allowed in the tenants claim against the amount allowed in the landlords claim, and I've issued a monetary order for the tenants to pay \$6395.00 to the landlords.

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: April 12, 2013

Residential Tenancy Branch