



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to applications filed by both the tenants and the landlord.

The tenants seek a monetary award for compensation for damage or loss in the amount of \$25,000.00.

The landlord seeks a monetary award for damages, unpaid rent and recovery of the filing fee in the sum of \$25,000.00 and he seeks to retain the security deposit.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

This tenancy began in June 2011 and ended on April 6, 2013. The tenants say that rent was set at \$1875.00 per month payable in advance and that they paid a security deposit of \$937.50 at the start of the tenancy.

The landlord has produced a tenancy agreement in which the landlord is named as "MA" and the tenants are SA, MA, JJ (SA, MA are the only tenants name in this application and although the landlord is noted as MA this is a different MA from the MA named as tenant). However on the signing page the Landlord is noted as the landlord named in this application and the tenants are MA (the party named as landlord on the first page) and SA. The agreement is signed by all parties on May 12, 2011.

The landlord confirmed that he rented the premises to MA and she in turned had other family members as tenants. The tenancy agreement shows that each adult tenant would pay \$425.00 per month towards the rent and each adult would also pay a security deposit of \$212.50.

The agreement notes that the landlord would supply a fridge and a stove.

The parties agree that the tenants vacated the rental unit without paying April's rent and without giving notice.

Tenants' Claim

The tenants say the house was uninhabitable because there was raw sewage leaking from the bathroom into the basement. The tenants testified that they asked the landlord repeatedly for the plumbing to be repaired but he refused. The tenants also say there was black mould in the rental unit and one tenant states that this black mould and the sewage caused the death of her 28 year old son who slept in the basement of the home. The tenant says the evidence that her son's death was caused by the conditions in the rental unit is contained in the coroner's report. The tenant testified that when the coroner's office came to pick up her son's body he remarked that it was the black mould and sewage that killed him. After this the tenants became fearful for their lives and the lives of their remaining children and decided to vacate the rental unit immediately without notice.

The tenants testified that there were leaking pipes under the kitchen sink and in the laundry room resulting in 6 inches of water in the basement. The tenants claim that the City of Surrey is sending more inspectors like electrical and plumbing inspectors because the place should be condemned.

The tenants testified that the City inspected the rental unit and told them it was a former grow operation and never should have been rented out. The tenants say the landlord never informed them that the rental unit was a former grow operations in which case they would not have moved in to the rental unit. The tenants say the evidence to support that this rental unit was a former grow operation is the business card supplied by the inspector from the City of Surrey.

The tenants say that when the landlord came to clean up the sewage in the basement he used their children's clothing to do so and they are claiming the costs of the clothing. In addition, the tenants say when they vacated they had to stay in hotels and with

friends while finding alternate accommodation. The tenants are seeking the following sums:

Replace children's clothing, buy groceries, pay hotel costs and cost of being accommodated in the homes of friends	\$5,000.00
Cost of first months' rent and security deposit at new accommodation	2,500.00
Compensation for loss (including \$15,000.00 in expenses for their son's burial).	17,500.00
Total	\$25,000.00

The tenants testified that they supplied all the receipts for their expenses to the Residential Tenancy Branch.

The tenants say the landlord is attempting to charge them for \$891.52 for duct cleaning which they say is not their responsibility.

One of the tenants testified that the landlord was "...coming on to me because I am a single mom..." and that he tried to touch her breast while she was bent over cleaning up the sewage in the basement. The tenant says she has filed a police report in this regard. The tenants say further that the landlord and his friend peek into their windows at night.

Landlord's Response

The landlord denies all of the allegations of the tenants.

The landlord submitted a Tenancy Agreement showing that the tenants rented the premises to house 4 adults, only 2 of whom were named as tenants in this application. The landlord notes that the Tenancy Agreement states that each of 4 adults would pay \$425.00 for rent (for a total of \$1,700.00). Each adult tenant would also pay \$212.50 towards the security deposit (for a total of \$850.00). The landlord says the rental unit was eventually occupied by 5 adults and 5 children. The Tenancy Agreement notes that the landlord supplied a stove and a fridge.

The landlord testified that he has attended the rental unit many times to make repairs to the plumbing because the tenants try to flush diapers and other debris like coffee and tea bags down the toilet. The landlord says this backs-up the toilet and the septic system and damages the pipes. Several times the landlord says he has had to completely remove the toilet to extract items from the toilet following which he had to

take the toilet outside to flush it with hose water to thoroughly clean it and then reinstall the toilet.

In addition the landlord says he has made several repairs to the kitchen sink plumbing because the tenants put garbage down the sink and he has had to use a snake to remove grease, food and hair lodged in the sink pipes. The landlord says that not only has he made repairs himself, he has had to get professional plumbers in to make repairs as well. The landlord provided several receipts for plumbing done at the rental unit. In one case the landlord notes that a plumber found that the hot water handle in the shower was stripped and the hardware for the toilet seat and the seat itself were in pieces and these were replaced.

The landlord says the pipes leaked from the damage caused by the tenants and he did attend to help clean up a small amount of water in the basement with rags supplied by the tenants but he did not use the children's clothing. The landlord says the son of one of the tenants resided in the basement sleeping on a mattress on the carpeted floor surrounded by debris and filth. The landlord denies that the rental unit was a former grow operation or that it has mould in it.

Landlord's Claim

The landlord submits that he did not receive rent for April so he went to the rental unit approximately April 6, 2013 to discover the tenants in the process of moving out. The landlord says he received no notice from the tenants whatsoever about their intentions. The landlord said he asked for April's rent but the tenants refused to pay it. The landlord is claiming rent for April and the costs of repairs he has made based on the receipts supplied.

The landlord submits that he inspected the rental unit and it has been severely damaged. The landlord says the carpets were new at move-in and they are now damaged as are the wood floors which had been refinished just prior to move-in. The landlord says the bathrooms are damaged, the kitchen sink is damaged, interior doors and the drywall is damaged. The landlord says that although the rental unit was to be non-smoking the tenants smoked in the rental unit and this has also caused damage.

Further, the landlord says that when they vacated the tenants took the new stove and fridge he provided.

The landlord submitted photographs of the basement showing a TV on the floor and two chairs, a mattress on the floor, clothing, linen, garbage, plates, and other debris strewn

about the floor. Another photograph shows hardwood floors severally worn, damage to the bathroom door that appears to be holes and a large hole in the hallway that had been patched. One photograph of the kitchen shows it to be in complete disarray with smashed plaster and debris all over the floor. Another photo shows the kitchen as reasonably clean. The landlord testified that this was after it had been partially cleaned. Photographs of the yard outside show filled shopping carts, children's toys, a high chair, mattresses, an office chair and other debris. In front of the garage are what appear to be rolls of linoleum flooring, wood, a shopping cart and other debris. The landlord submits that these tenants lived in filthy surroundings that they gathered garbage off the streets and brought it to the rental unit. The landlord says he had serious concerns for their younger children who had to live in this filth.

Further the landlord says that when he was able to get into the house to inspect it he saw that the fridge and stove he supplied were gone.

In total the landlord claims \$25,000.00.

The tenants say that the fridge and stove belonged to them.

Analysis

Tenants' Claims

The tenants have claimed that the rental unit was a former grow operation with mould and plumbing problems so significant and ongoing that it was the cause of the death of one of their children. Yet there has been no documentary evidence to show that they wrote to the landlord to complain of these serious issues or that since the start of this tenancy in June 2011 that they brought any claims for dispute resolution to compel the landlord to make repairs. The tenants say the City of Surrey inspectors have attended several times and have stated the rental unit should be condemned but information from the City was not provided. With respect to their allegation that they lost a child due to the conditions of the rental unit the tenants have not supplied the very evidence upon which they say this belief is founded i.e. the coroner's report.

Overall, I find that the tenants, with the exception of their own testimony, have failed to bring sufficient supporting evidence such as reports or documentation to support their version of events or to prove that the landlord should be held responsible for any of the sums claims. The tenants' claims are therefore dismissed.

Landlord's Claims

The undisputed evidence shows that the tenants vacated the rental unit without giving notice. I find that they are therefore responsible for rent in lieu of notice for one month in the sum of \$1,875.00.

With respect to the balance of the landlord's claims for repairs to plumbing, carpeting the receipts provided are for work performed in 2012 and many of the receipts are not clear as to where the work was performed or what work was performed. However, given the undisputed photographic evidence of the condition of this rental unit during this tenancy it is reasonable and probable to conclude that there were many repairs to be performed when this tenancy ended. I find it reasonable and probable that the landlord would incur expenses of at least \$5,000.00 to make repairs. While this sum is arbitrary an award need not be in an exact sum only a sum reasonable in the circumstances.

With respect to the missing fridge and stove the tenancy agreement states that the landlord was supplying these items for the tenants. This tenancy has ended and these items are now gone. It is reasonable and probable to conclude that the tenants took them, in fact the tenants have stated that they believed these appliances to belong to them and perhaps on that believe they were taken. In any event the documentation shows that the landlord supplied these items and I will therefore allow the landlord \$500.00 toward the replacement of these appliances.

As the landlord has been partially successful in this claim I will allow him to recover the filing fee he has paid and allow him to retain the security deposit in partial satisfaction of his claim.

The award in favour of the landlords is calculated as follows:

Rent in lieu of Notice	\$1,875.00
Cost of repairs	5,000.00
Replace missing fridge and stove	500.00
Sub total	\$7,375.00
Less security deposit held by landlord (no interest accrued)	-937.50
Filing fee	50.00
Total award in favour of landlord	\$6,487.50

Conclusion

The landlord is provided with a formal monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: May 30, 2013

Residential Tenancy Branch

