



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call. The landlord and her husband participated in the hearing. The named tenant called in and participated on behalf of the tenants.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the security deposit or some part of it?

Background and Evidence

The rental unit is a house on Vancouver Island. The tenancy began on May 1, 2011 for a one year term and thereafter month to month. The rent was \$1,850.00 and the tenants paid a \$900.00 security deposit on April 23, 2011. According to the landlord the tenants failed to pay rent and utilities and the landlord served the tenants with a 10 day Notice to End Tenancy on February 16, 2013. The Notice alleged that the tenants failed to pay rent in the amount of \$2,500.00 that was due on February 1, 2013. The Notice required the tenants to move out by February 28, 2013. The tenant responded to the Notice to End Tenancy by e-mail; he said that the tenants would move out by the end of February.

The landlord said that on February 28th she returned from out of the country to deal with the rental property, meet with the tenants and conduct a condition inspection. The tenants did not attend the property on February 28th. They had completed the move out the previous day. The landlord testified that the house was left in a state of filth, disrepair and clutter. The landlord has claimed a monetary award in the amount of \$7,093.46 made up of the following:

• Unpaid rent:	\$3,700.00
• Unpaid utilities:	\$423.74
• Cleaning, repairs, painting, trash removal:	\$1,344.00
• Trash disposal:	\$109.76
• Paint and materials:	\$242.80
• Labour (landlord's husband)	\$300.00
• Landlord labour, carpet, house cleaning	\$625.00
• Stove top replacement:	\$348.16

The landlord said the claimed rent was unpaid rent for February and rent for March, because the house could not be re-rented for March. The landlord submitted photographs of what was said to be the debris and garbage left by the tenants and the cleaning and repairs that were necessary at the end of the tenancy.

The tenants submitted documentary evidence in response to the landlord's claim. The tenant claimed to have performed extensive work on the rental property including landscaping of the front and back yard, and drywall and partition wall construction and repair of what he termed an illegal basement suite. As well the tenant said that he repaired the main bathroom and fixed the mouldy, leaky bathroom ceiling, repaired gutter downpipes and preformed wall repairs to stop noise from creaking pipes.

The tenants referred to their involvement to assist the landlord with a troublesome former tenant.. They submitted pictures of what they said were the renovation and repair work performed for the landlord.

The tenants disputed the landlord's claims cleaning and repairs; they said the house was in disgusting condition when they moved in and they had to perform extensive cleaning to make it habitable. They denied that the landlord's pictures of debris showed stuff they had left behind. The tenants said that it was old construction material and an old shop table and other items that were at the rental property when they moved in. The tenant said that they moved out in part because they could not afford the rent and the large heating bills for the rental property.

The landlord disputed the tenant's claims that he performed the stated landscaping work; she said the work was mostly done by others. She said that drywall work was performed by her husband and by the tenant and the tenant, who is a drywaller by trade, was paid \$400.00 cash for his work. She said the tenant received a rent reduction for some bathroom work. With respect to repairs to fix noisy pipes the landlord said that this work was unnecessary and performed incompetently; she said

that she had to pay to repair damage caused by the tenant and paid for a plumber to diagnose and test the plumbing.

Analysis

There is no dispute that rent was not paid for February and that the tenants left without proper notice. The tenant has alleged that he is entitled to be paid for work performed at the request of the landlord, but his claims are not the subject of an application before me and it is not clear that if a claim is brought by the tenant, that it involves a tenancy matter that falls under the jurisdiction of the *Residential Tenancy Act*. I therefore will not address the tenant's claims for compensation for services performed.

The tenants testified that the debris pictured in the photographs was not the tenant's property and from the photos, much of it appears to be construction waste. I find that the landlord has not established that the tenants are responsible for the cost of removing debris from the rental property. With respect to the cleaning claims, the tenants testified that they had to perform extensive cleaning at the commencement of the tenancy. The condition inspection report submitted by the landlord revealed that the rental property needed work at the start of the tenancy and it noted that the tenant was hired to do some cleaning work. There was mention of carpet stains, other defects and a need for paint. The tenants did not participate in the move out inspection; part of the landlord's complaints relate to her issues with the so called "wet wall" work and the condition of some of the dry wall after the tenant worked on the noisy pipe issue. Given the state of the evidence about the condition of the rental unit at the start of the tenancy and the evidence that the tenant was employed to perform work to the rental property during the tenancy I find that the landlord has not proved on a balance of probabilities, that the tenants are responsible for any amounts claimed for cleaning, repairs, painting or trash removal. Proof of the matters claimed by the landlord is confused by the landlord's acknowledgement that there was ongoing work performed during the tenancy both by the tenant and by her husband. I allow the landlord's claim for unpaid rent for February and for March rent in the amount of \$3,700.00 as well as utilities in the amount of \$423.74. The remainder of the landlord's claims I find to be unproven and they are dismissed without leave to reapply.

Conclusion

The total award to the landlord is the sum of \$4,123.74. The landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for this application, for a total of \$4,173.74. I order that the landlord retain the \$900.00 security deposit that she holds, in partial satisfaction of this award and I grant the landlord an order under section 67 for the

balance of \$3,273.74. This order may be registered 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: October 04, 2013

Residential Tenancy Branch

