



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, FF

For the landlord – MND, MNR, MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant has applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations, or tenancy agreement, and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for, a Monetary Order for unpaid rent or utilities, a Monetary Order for damage to the unit, site or property, a monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlords also seek an Order to keep the tenants security deposit and to recover their filing fee.

At the outset of the hearing the parties agreed that the security deposit has been returned to the tenant and the landlord withdraws their application to keep all or part of it.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, although the landlord's agent states that they have not received the tenant's evidence package but are happy to continue with the hearing and have the tenants evidence included. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on June 01, 2013 for a fixed term tenancy which was due to expire on June 01, 2014. Rent for this unit was \$1,795.00 per month and was due on the 1st day of each month. The tenant paid a security deposit of \$900.00 which has been returned to the tenant on August 02, 2013.

The tenant testifies that when he viewed the property prior to moving in the landlord had informed the tenant that the basement had been newly renovated. All the doors and windows were open to get rid of the smell of new paint. When the tenant moved in the doors and windows were closed and there was an awful smell pervading the house. The tenant contacted the landlord about the smell and the landlord wanted to discover what was causing this awful smell.

The tenant testifies that on June 05, 2013 the landlord asked the tenant to dismantle the bedroom in the basement as the smell was worse in this area. The tenant and landlord agreed that the tenant could charge \$30.00 per hour per man to do this work and as the tenant had a roofing company he had the skills and man power. On June 25, 2013 the tenant started to take the room apart. The tenant testifies that he found the subfloor had been removed as it was rotten and when the walls were taken down the tenant found

the insulation had been eaten by rats, there were dead rats, rat feces and urine everywhere.

The tenant testifies that the landlord came to have look and said to carry on with the work and to take the ceiling down to find where else the smell was coming from. The tenant testifies that when the ceiling was taken down there was so much rat feces and urine that it was unhealthy and disgusting. The tenant realized that not all of the basement had been renovated. The tenant testifies that he stayed in communication with the landlord's agent and was told to keep working on this room.

The tenant testifies that on June 29, 2013 he purchased some materials and gave the landlord the bills for these plus the hours worked so far by the tenant and his worker. The tenant testifies that the way the beams ran meant the ceiling was a rat highway for the rest of the house and the whole basement needed to be gutted as there was also a water leak which had made the carpets wet.

The tenant testifies that he experienced respiratory problems and when the landlord's agent and his wife came to the unit they said that due to the extent of the work required that it was best if the tenant moved out and got an hotel. The tenant testifies that the landlord's agent told the tenant it was alright for the tenant to leave his belongings and work equipment at the unit until the tenant found another place or storage for these items.

The tenant testifies that he asked for this rent back for July and the landlord's agent said that that would not be a problem. The tenant moved out on July 02, 2013.

The tenant testifies that he checked out the hotels in the area and due to the session the charges were 800.00 to \$900.00 a week. The tenant decided to stay at his brother's house instead and had to take a ferry each day to come to work. The tenant testifies that this was still cheaper then getting a hotel. The tenant testifies that he continued to look for alternative accommodation but without receiving his rent paid for July and his

security deposit from the landlord the tenant could not afford to rent anything else. The tenant testifies that the landlord's agent informed the tenant that they would not do anymore work on the house and would sell it to a developer. The tenant seeks to recover the rent paid for July. The landlord had given the tenant \$900.00 from Julys rent for the work completed to date but this work actually came in at \$970.00. The tenant therefore seeks to recover the amount paid of \$895.00 plus the deductions made for the work of \$900.00 plus the additional \$70.00.

The tenant seeks to recover the costs of his ferry trips for \$736.50 and the additional gas used to get to and from work of \$736.50 for the month of July, 2013. The tenant also seeks to recover the cost to store his belongings. The tenant testifies that he had to rent two storage lockers one for his work equipment and one for his personal belongings. The tenant testifies that he was able to leave his belongings in the unit until July 11, 2013, as agreed by the landlord, and has provided two invoices for the separate storage units rented from July 11, 2013 to September 10, 2013. The tenant however only seeks to recover storage costs for July, 2013. The storage costs were \$189.00 and \$265.00 per month prorated for part of July.

The tenant refers to his photographic evidence which shows the large amount of rat feces and urine stained areas plus dead rats, rat nests, and the eaten insulation, a poorly sealed foundation allowing water to seep into the basement and the tenant and his workman wearing hazmat suits to clean up the mess due to safety health issues with the rat feces and urine.

The tenant testifies that after he was told to vacate the unit he continued to work the following weekend to try to help the landlords determine where the rats were getting in and believes it was through the attic. The tenant testifies that you could hear rats running across the ceiling. The tenant testifies that the landlord had previously had a section of the ceiling and wall taken down and should have then known about the rats, the rat feces and the lack of insulation. However the landlord did not disclose this to the

tenant at the start of the tenancy. The tenant agrees that the basement had been painted and the laundry room, bathroom had new drywall.

The tenant testifies that when he moved into the unit, he entered into a contract with cablevision. As the tenant had to leave immediately he had to cancel that contract and as he could not provide a months' notice he incurred a cost of \$110.00. A copy of the invoice has been provided in evidence.

The landlord's agent disputes the tenant's claim. The landlord's agent testifies that they did have good communication between the agent and tenant concerning the work required. On June 05, 2013 the tenant did call the agent over to the unit because of the smell. The agent testifies that he volunteered to bring someone in to determine what was the cause of the smell but instead the tenant agreed to do the work for \$30.00 per hour. The agent agrees that on June 25, 2013 the tenant started to take the room apart but when the agent went to view this room the tenant had already cleaned up so just showed the agent some photos of his findings. They discussed how much the landlord owed the tenant at that time and the tenant said it was \$600.00. The agent agreed to pay the tenant \$900.00 which included \$300.00 to go towards further investigation. At that time it was unknown what was going on or where the smell was coming from.

The landlord's agent testifies that on July 02, 2013 the tenant called and the agent and his wife went to the unit. The tenant said that due to everything there, it was bad for his health and he would have to move out. The agent agreed and said that's fine but to let the agent know when the tenant was leaving and to provide notice. The agent testifies that they did not hear from the tenant again until August 02, 2013 when the tenant returned the keys and the landlord returned the security deposit.

The landlord's agent testifies that after the tenant moved out they were worried about rodents so set bait traps. No rats were found and no feces was seen. The agent testifies that they did agree the tenant could move out and they continued to text the tenant to

see when he was moving out as the neighbours informed the landlords that the tenant was still using the garage for storage throughout July.

The landlord's agent testifies that the landlord seeks to recover the amount of \$300.00 which was given as a rent rebate for July for further investigations that the tenant did not do. The landlord also seeks to recover the costs incurred to drywall the basement room of \$660.57 and \$125.53 for drywall supplies because the tenant did not finish this work and left the house unlivable. The landlord has provided invoices and receipts for this work

The landlord's agent testifies that the tenant also smoking in the unit and the carpets, drapes, bathroom and kitchen all had to be cleaned. The landlord seeks to recover the amount of \$300.00 but has not provided any invoices for cleaning.

The landlord's agent testifies that as the tenant abandoned the unit without notice, the unit could not be rented for August. The unit was not advertised until early September as the landlord wanted to make sure there were no more rodents and had to decide whether to bulldoze the property or fix it up.

The landlord's agent testifies that the tenant left unpaid utilities from June 11 to August 14 of \$103.85. The landlord has provided a copy of this bill in evidence. The landlord also seeks to recover a reconnection fee of \$125.00 charged to the landlord by BC Hydro as the tenant had Hydro in his name and disconnected it when he moved out.

The tenant disputes the landlord's claims and testifies that he only used the garage for two weeks for storage as agreed by the landlord while the tenant was looking for another place to rent. The tenant's belongings were then moved to two storage lockers on July 11, 2013.

The tenant disputes the landlords claim for drywall. The tenant testifies that he was paid for the work he did and no more. The landlord had also told the tenant not to use drywall

but to use a cheaper wood panelling. The landlord cannot now hold the tenant reasonable for dry walling.

The tenant disputes the landlords claim for cleaning. The tenant testifies that no inspections were done at the start or end of the tenancy. At the end of the tenancy the landlord's agent said everything looked fine. The carpets could not have been dirty as they still had the plastic on them put down by the landlord before the tenant moved in. The tenant testifies that he did clean the bathroom and kitchen and was only really living in the house for two weeks.

The tenant disputes the landlords claim for \$300.00 in rent. The tenant testifies that he did this extra work as requested by the landlord the weekend before he moved out. The tenant testifies he bleached walls and tried to find the entry point for the rats. The tenant disputes that he used the house during July and testifies that he only used the garage for two weeks

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for money owed or compensation for damage or loss; I refer the parties to the *Residential Tenancy Act (Act)* s. 32(1) which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(A) Complies with the health, safety and housing standards required by law, and

(b) Having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Whether or not the landlord was aware of the issues in the basement prior to the tenancy commencing; I find upon review the documentary evidence before me that the rental unit was not fit for occupation by the tenant. I also have concerns that if such a strong smell was prevalent on the day of occupation why this was not present prior to the landlords painting the basement. The evidence shows that the basement and potentially other areas of the home were infested with rats due to the high levels of rat feces present, the dead rats and the urine staining on the ceiling and wood joists. Rats are renowned for spreading virus and disease and their feces and urine can cause respiratory complaints in some individuals. It is therefore my decision that the landlord was in breach of s. 32(1) of the *Act* and as such the tenant is entitled to be compensated for his losses in having to vacate the unit.

If the landlord had reimbursed the tenant the rent paid for July and returned the security deposit then the tenant may have been able to find alternative accommodation in the local area. Consequently, I uphold the tenant's claim for ferry costs from his brothers to work and back again as these costs would be cheaper than staying in a hotel. Furthermore I find the tenant is also entitled to be compensated for the additional gas used to get to and from his brothers in order to conduct his work. The tenant is therefore entitled to recover the amount of **\$1,263.39**.

I find the tenant is entitled to claim storage costs from July 11 to July 31, 2013 as the tenant had vacated the unit and as he had not been able to secure alternative accommodation he had to pay to have his belongings stored. The tenant has only claimed storage costs from July 11 to July 31, 2013. I have therefore calculated these costs on a daily rate for 20 days of storage use for July. I therefore find the tenant is entitled to recover the amount of **\$292.79**.

I find the tenant is also entitled to recover the costs incurred for the extra month's cable vision as the tenant would not have known when he started this contract that the house was going to become unsuitable for occupation. The tenant is therefore entitled to recover the amount of **\$110.00**.

I find the tenant is also entitled to recover the rent paid for July of \$895.00 and the amount owed to the tenant for the work performed of \$970.00. The tenant is therefore entitled to recover the amount of **\$1,865.00**.

With regard to the landlords claim for unpaid rent for July of \$300.00; I have found in favour of the tenants claim that the tenancy could end and that July's rent will be returned to the tenant. I further find that the landlord has provided no evidence to show that the tenant did not continue to work on the property for the final weekend as shown by the tenant's evidence in the form of a work sheet showing hours worked.

Consequently, the landlord has not met the burden of proof and the landlords claim for unpaid rent is dismissed.

With regard to the landlord's claim for dry wall and supplies; the tenant agreed to do work at an hourly rate and was reimbursed for this work. If there continued to be work required in the unit after the tenant had vacated the unit and the tenant had not been reimbursed for the dry walling work then the landlord cannot now hold the tenant responsible for this additional work on the property. Consequently the landlords claim for \$786.10 is dismissed.

With regard to the landlords claim for cleaning carpets, drapes, the kitchen and bathroom; the landlord did not complete a move out inspection with the tenant and there is no evidence to show that the carpets or drapes required cleaning or that the tenant did not leave the kitchen and bathroom reasonable clean. The landlord has provided no invoices or receipts to show that this work has been carried out. Consequently, the landlord has not met the burden of proof and this section of their claim for \$300.00 is dismissed.

With regard to the landlord's claim for a loss of rent for August, 2013; the parties have provided contradictory testimony concerning whether or not the landlord agreed the tenant could vacate the unit at the beginning of July. As I have determined that the landlord was in breach of s. 32 of the Act, then I have also determined that the tenancy

ended at that time. Furthermore the landlord made no attempts to mitigate the loss of rent by getting the unit re-rented as quickly as possible and did not even start to advertise the unit for rent until early in September Section 7(2) of the *Act* states:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Consequently, the landlord claim for a loss of rent of \$1,795.00 is dismissed.

The tenant is entitled to recover the **\$50.00** filing fee from the landlord. As the landlord has been unsuccessful with this claim the landlord must bear the cost of filing their own application.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,581.18**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed without leave to reapply.

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: November 14, 2013

Residential Tenancy Branch

