



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNR, MNDC, FF
For the tenant: MNDC, MNSD, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee.

The tenants applied for a monetary order for money owed or compensation for damage or loss, a monetary order for a return of their security deposit, and for recovery of the filing fee.

This hearing began on November 26, 2013, continued for 70 minutes, and dealt only with evidence issues, as the landlord claimed not to have received the tenants' application for dispute resolution or evidence.

The tenants then submitted that they had proof that the landlord signed for the registered mail, at which time the landlord acknowledged receiving the package, but all pages were blank. The tenants strongly denied that they sent blank pages to the landlord, which was sent by global express mail as the landlord resides in the USA. Out of an abundance of caution, the hearing was adjourned and the tenants were ordered to re-serve their application and evidence, with proof of delivery.

I must note that I explored the option of the tenants serving the landlord with their evidence and application via email attachment due to the parties' extensive email communication history; however, the landlord informed me that it was not possible to open and print the documents.

No testimony was taken at the original hearing on the merits of either application.

The parties were informed that the hearing would be adjourned in order to allow the tenants to re-serve their application and documentary evidence to the landlord, and that the adjourned hearing would be taken to consider both applications.

This hearing proceeded on the parties' original applications for dispute resolution.

At this hearing, all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's application, and make submissions to me.

I have read and reviewed the significant amount of submitted oral and documentary evidence for both applications before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-At the reconvened hearing, the landlord again denied that she had received the tenants' documentary evidence and application.

The tenants submitted that their second package of documents containing their application and evidence was sent to the landlord in the USA via a courier service and supplied the evidence showing delivery. The tenants stated that they confirmed delivery with the courier service.

The landlord denied living at the address to which the tenants sent their mail.

After considering the submissions of both parties at both the original hearing and the reconvened hearing, I find upon a balance of probabilities that the landlord received the tenants' application and evidence, and I continued with the hearing on both parties' applications at the reconvened hearing. I considered that the tenants supplied copies of emails to the landlord requesting her application and evidence and informing the landlord that they had filed their own application and evidence, requesting her address each time.

I also considered that the landlord failed to submit proof that the pages were blank.

I must further note that the landlord continuously and with vigor challenged the legality of continuing with the hearing concerning the tenants' application as she had not received either their application or evidence, according to the landlord.

I must further note that the landlord continuously stated that she could not stay for the full length of the hearing, that she would have no more than an hour as she was an instructor and in the midst of teaching a class, in the USA.

The landlord did exit prior to the conclusion of the hearing, after full consideration of her application, stating that her work was more important, and short of a full consideration of the tenants' application.

Preliminary matter #2-As the tenancy had ended prior to tenants filing for dispute resolution, I have not considered their request to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Issue(s) to be Decided

1. Is the landlord entitled to a monetary order for damages or loss and unpaid rent, and to recover the filing fee?
2. Are the tenants entitled to a return of their security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

I heard testimony that this tenancy began on May 1, 2013, ended on or about August 16, 2013 and monthly rent was \$2000.

The parties disputed whether or not a security deposit was paid by the tenants, with the landlord stating that the tenants did not pay any amount and the tenants stating that they had paid a security deposit for in kind services.

There was no written tenancy agreement and the parties agreed that there was not a condition inspection report, either at move-in or move-out.

The evidence shows that the landlord now lives and has lived in the USA since prior to the beginning of this tenancy

Landlord's application-

The landlord's monetary claim listed in her application was \$20,000; however the landlord failed to provide a detailed calculation as required. In her documentary evidence, rather through an amended application, the landlord attempted to increase her monetary claim.

I have allowed the monetary claim of the landlord despite not providing a detailed calculation in her application for dispute resolution due to the detailed oral evidence and to provide a more expeditious conclusion to the issues between the parties, which would involve a dismissal of the landlord's application with leave to reapply for her failure to comply with section 59(2)(b) of the Act.

I must note that neither party objected to proceeding with the landlord's application on the detailed calculation provided in her documentary evidence.

The landlord's monetary claim is \$20,323.10, comprised of the following:

- \$6000 for furniture, tiles, freezer and exercise equipment
- \$10,000 for repairs to the rental unit
- \$895.99 for the cost of a refrigerator
- \$427.21 for interior plumbing and heating
- \$1000 for the landlord's travel from her home in the USA to the rental unit

- \$2000 for unpaid rent for the last month of the tenancy

The landlord's relevant documentary evidence included a written synopsis containing the details of her monetary claim, a copy of an unsigned partial tenancy agreement, a 10 Day Notice to End Tenancy for Unpaid Rent, a plumbing bill, photocopies of pictures of the rental unit, and copies of email communication between the parties at the beginning of the tenancy.

The landlord provided the following testimony in support of her application:

Furniture, tiles, freezer and exercise equipment-

The landlord submitted that the tenants removed and destroyed many items of her personal property she left in the rental unit, including the above items, although the landlord sent the tenants an email with instructions as to what could be kept and stored, or thrown out.

The landlord submitted that the rental unit was not supposed to be a rental house, but nonetheless it was rented as she had relocated to the USA.

The landlord submitted that the tenants understood that she had left personal property in the rental unit and that they were not properly store the property, not destroy it. The landlord stated that she put the figure of \$6000 down as a rough estimate, but that her actual claim would be at least \$1000.

In response, the tenant submitted there were never any tiles in the house, although there were several broken tiles in the rental unit, for which the tenants put cardboard over to prevent injury. The tenant submitted that he is in construction and that if there were any tiles left, he would have repaired the floors.

The tenant further submitted that the landlord said she would be coming to the rental unit in the first week of the tenancy to remove her personal property, but failed to do so.

The tenant submitted that they had the landlord's permission to throw away the items they did, as there were many items which were not the landlord's, as documented in an email provided by the tenants. The tenant submitted that each time they sent the landlord emailed photos of personal property left in the rental unit, the landlord replied that those items were not hers.

The tenant submitted that they spent many hours in cleaning the rental unit at the start of the tenancy, and that their movers could not move the tenants' furniture in due to the clutter in the rental unit, for a period of at least 12 days.

The tenant submitted that the landlord cried to them in telephone conversations as she was unsure what to do with the condition of the rental unit, but that the landlord never came to the rental unit the entire summer.

In response, the landlord submitted that the tenant agreed to repair the floors, which proves there were tiles left in the rental unit.

The tenant responded that the parties discussed a written tenancy agreement when they moved in, but since the landlord wanted the tenants to make repairs and to look after another house for the landlord, their lawyer advised them not to sign the agreement as is.

Repairs to the rental unit-

The landlord submitted that the tenants cut a square in the furnace, as shown by her photo, and that she had to put a new roof on the house due to the duct work. The landlord submitted that the tenants made alterations to the rental unit, without authority.

In response the tenant pointed out that the landlord provided no receipts for this claim and that the tenants never turned on the furnace. The tenant submitted that there was an existing hole in the humidifier.

The tenant submitted that he was not sure what the landlord claimed as he did not make any structural changes, although he was required to replace the taps in the sink as they came right off.

Cost of a refrigerator-

The landlord submitted that the tenants cut the cord to the refrigerator and therefore it was necessary to replace the appliance. The landlord submitted that she never heard from the tenants that the refrigerator was not working, which was further proof that the tenants cut the cord.

In response, the tenant denied cutting the cord, and that they did notify the landlord of a problem with the refrigerator. The tenant submitted that he was informed to pull out the cord from the electrical socket, and to plug it back in, which started the refrigerator again.

The tenant submitted that perhaps the landlord was speaking of the electrical tape around the cord which was there when they moved in. The tenant submitted that the refrigerator was at least 20 years old, as could be seen by the photograph he submitted.

The tenant further submitted that they were without a refrigerator for over a month, but that the landlord refused to repair the appliance as the tenants did not pay rent.

Interior plumbing and heating-

The landlord waived this claim.

Travel from landlord's home in the USA to the rental unit-

The landlord stated that she understood that she could not claim this amount after the first hearing; however no findings were made of any sort at the first hearing on these applications. No testimony was taken at the hearing.

Unpaid rent-

The landlord submitted that the tenants did not pay rent for August, 2013, the last month of the tenancy, and that she served them with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant did not deny this allegation.

Tenants' application-

The tenant's monetary claim listed in their application was \$5000; however the tenants failed to provide a detailed calculation as required. In their documentary evidence, rather through an amended application, the tenants provided a detailed calculation attempted to increase her monetary claim.

The tenants admitted that they had not paid a security deposit as their work performed and expenses paid to bring the rental unit up to a liveable standard was to be treated as such a security deposit.

The tenants submitted a significant amount of documentary evidence, all of which I have reviewed. Included in, but not limited to, were documents relating to proof of service of the tenants' application and evidence to the landlord, a 10 page synopsis including the tenants' breakdown of their monetary claim, emailed requests to the landlord asking that she send them her application and evidence as they found out the landlord had filed an application, photographs of the rental unit, a timeline of events, a full copy of an unsigned tenancy agreement, with an addendum containing unenforceable terms, email communication between the parties from the beginning stages of the tenancy, with attached photographs, extensive email communication between the parties throughout the tenancy, a partial copy of a 1 Month Notice to End Tenancy for Cause, another copy of a tenancy agreement, signed, but undated by the landlord and signed and dated by the tenants, with a different addendum signed by the tenants, a witness statement regarding garbage removal, banking information, receipts said by the tenants to be proof of garbage removal and cleaning of the rental unit at the beginning of the tenancy, phone records, storage and moving, fuel and hotel receipts, storage receipts, other witness statements, and store receipts.

Included in their monetary claim, the tenants listed a fee of \$400 paid to a cleaning service, \$400 paid to the garbage hauler, \$260 paid to an assistant to the garbage hauler, fuel to haul away garbage and the landfill fees, cleaning supplies, new deadbolts, work performed by the tenant and another individual in showing and cleaning the landlord's other home in the area, change of address fees, long distance phone charges, storage, moving and hotel fees, filing fees, copying fees and registered mail fees.

In support of their application, the tenant submitted that they have asked for the amount listed in the monetary claim as these were an accumulation of items for which the landlord said she would provide. In further explanation, the tenant submitted that although the tenancy was to start on May 1, 2013, the rental unit was in no condition for them to begin the tenancy.

Specifically the tenant submitted that the landlord had not lived in the rental home for at least 12 years, and over the course of the 12 years, many sets of tenants had either left personal property or the landlord had left some old furniture and items.

The tenants submitted that they emailed the landlord pictures of the personal property as well as the condition of the rental unit, which included broken tiles, a filthy stove/oven unit, broken fences, dirty and unclean rental unit, and leaking plumbing. The tenant submitted that the landlord upon viewing the photos realized that some of her personal property was missing.

The tenant submitted that the rental unit was not liveable at the start of the tenancy and as the landlord lived in the USA and could not attend to the cleaning and repairs, the landlord agreed that the tenants could hire a cleaner and someone to haul away garbage.

The tenant submitted that they could not move into the rental unit due to the unclean and unrepaired state. The tenants mentioned mould being in the rental unit due to plumbing issues and the various items of personal property left in the rental unit.

The tenant submitted that the landlord hired him to look after and to show another house in the area.

The tenant submitted that they incurred hotel and fuel expenses due to the actions of the landlord.

The landlord provided no response as she had left the telephone conference call hearing by this point.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlord's Application

Furniture, tiles, freezer and exercise equipment; repairs to the rental unit; interior plumbing and heating-

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of conducting inspections and completing the reports and the landlord supplied no evidence of the condition of the rental unit at the beginning or at the end of the tenancy.

Additionally I find that the landlord failed to prove that the tenants unlawfully removed and disposed of any of the landlord's personal property, and that the tenants were not responsible for the personal property left by the landlord.

I therefore find the landlord failed to prove that the tenants were responsible for any damage, lost personal property, cleaning and repairs, or to submit proof that she has suffered a loss and I dismiss her monetary claim furniture, tiles, freezer and exercise equipment, repairs and plumbing and heating, without leave to reapply.

*Cost of a refrigerator-*I find the landlord submitted insufficient evidence that she was required to replace a refrigerator due to the actions or responsibility of the tenants. I find the tenants' explanation that the electrical cord was taped to be plausible and as there was no proof of the condition of the refrigerator at the beginning of the tenancy, I dismiss the landlord's claim, without leave to reapply.

*Travel costs-*As to the landlord's request for travel expenses, I find that the landlord has chosen to incur costs that cannot be assumed by the tenants as I do not find the tenants to be responsible for the landlord choosing to rent a property in another town from

where the landlord resides. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit. Therefore, I find that the landlord is not entitled to travel costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the landlord's claim for \$1000, without leave to reapply.

Unpaid rent-Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find that the evidence supports that the tenants owed monthly rent of \$2000 at the beginning of each month, owed rent for the month of August 2013 on August 1, as contractually obligated, and did not pay.

I therefore award the landlord the amount of \$2000, the amount of monthly rent.

Tenants' application-

Section 32 of the Act states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

The only evidence supplied depicting the state of the rental unit were the photographs supplied by the tenants, which I find proved that the rental unit was not in a condition to be rented at the start of the tenancy as required by section 32.

I find the evidence submitted by the tenants, which was undisputed by the landlord as she had departed the telephone conference call hearing before responding to the tenants' application, shows that the rental unit required cleaning and garbage removal on the start date of the tenancy. I further find that the undisputed evidence supplied by the tenants supports that the landlord agreed to compensate the tenants to bring the rental unit to a liveable state, which included a cleaning service and garbage removal.

I therefore accept that the landlord should compensate the tenants for the cleaning service of \$400, as shown by the receipt, \$400 for a garbage hauler, \$20 for a landfill cost on May 4, 2013, as shown by the receipt, \$17.60 for a landfill cost as shown by the receipt, and \$24.60 for a landfill cost as shown by the receipt. **I therefore approve a monetary award of \$862.20.**

I have not allowed any claims by the tenants for expenses for labour to the rental unit or labour and attending to the landlord's other property, as these claims are more in the way of a contract for services and therefore not under the jurisdiction of the Residential Tenancy Act.

As to the other miscellaneous costs claimed by the tenants, I was not able to determine whether some of these costs, some of which were for the month of June for things such as fuel costs, were commingled with costs associated with fuel for other personal uses, or with attending to the landlord's other property. Further the tenants did make the choice to move into the rental unit, despite the condition of the rental unit, which I find shows that the tenants did not fully mitigate their loss.

I have therefore declined to award the tenants monetary compensation for these claims. The tenants are at liberty to pursue any monetary claim not specifically under the jurisdiction of the Act and which have been dealt with in this dispute resolution matter in another legal venue.

As to the other costs, such as hotel, moving and storage fees, and a change of address, these are choices the tenants made, both in entering into a tenancy and ending a tenancy, on how to facilitate their moving and I find I do not have authority under the Act to award these expenses; those claims are therefore dismissed.

As to the long distance charges, printing and copying, and registered mail expenses, I find the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee and those claims are dismissed.

As the tenants did not pay a security deposit, I have declined to award the return of the security deposit.

Both applications-

I have declined to award either party recovery of their filing fee as both applications contained some merit.

I have granted the landlord a monetary award of \$2000 for unpaid rent.

I have granted the tenants a monetary award of \$862.20.

From the landlord's monetary award of \$2000, I have set off, or deducted the amount of the tenants' monetary award of \$862.20, and grant the landlord a monetary order for the balance in the amount of \$1137.80.

Conclusion

The landlord's application for monetary compensation for has been granted in part.

The tenants' application for monetary compensation has been granted in part.

I have set off the tenants' monetary award from the landlord's monetary award and granted the landlord a monetary order for the balance, as stated above.

The landlord's monetary order is enclosed with her Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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: February 17, 2014

Residential Tenancy Branch

