



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding East Kootenay Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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 landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$5,956.59 and a request for recovery of the \$100.00 filing fee.

The tenant's application is a request for a monetary order for \$1846.00, and a request for recovery of the filing fee.

A substantial 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.

All testimony was taken under affirmation.

Issue(s) to be Decided

The landlords reduced their claim, and therefore the issue before me on the landlords claim is whether or not the landlords have established a monetary claim for \$2624.77 and a claim to hold the security deposit of \$425.00.

The issue before me on the tenants claim is whether or not the tenants have established a monetary claim for \$1846.00.

Background and Evidence

The landlords testified that:

- There was a moisture problem in the tenant's rental unit, however they believe the problem was due to poor air quality management by the tenants.
- There were double windows in the rental unit however the tenant left the outside window open and they believe this caused a moisture problem around the window.
- They also suspect that the tenants left the bathroom door open while showering, thereby creating more moisture in the rental property.
- The tenants reported the moisture problem and their fear of possible mold at the beginning of November 2013.
- They attempted to work with the tenants to move them into another rental unit; however the tenants did not accept any of their proposals and subsequently vacated the rental unit, even though they were in a fixed term lease that ran until May 31, 2014.
- They were unable to re-rent the unit until February 1, 2014 and therefore lost two months rental revenue totaling \$1700.00.
- They also had to purchase a dehumidifier in an attempt to reduce the moisture levels in the rental unit.
- After the tenants vacated they also had to repair the unit due to the moisture buildup around the window.
- The tenants also failed to return the keys to the rental unit at the end of the tenancy.

They are therefore requesting a monetary order as follows:

December 2013 Lost Rental Revenue	\$850.00
January 2014 lost rental revenue	\$850.00
Cost of dehumidifier	\$236.59
Cost to repair moisture damage to unit	\$945.00
Cost of two registered letters	\$44.94
Locksmith charge to change locks	\$23.24
Filing fee	\$100.00
Subtotal	\$3049.77
Minus security deposit held	-\$425.00
Total	\$2624.77

They therefore request an order allowing them to keep the full security deposit and request that above monetary order be issued.

The tenants testified to that:

- The moisture problem in the rental unit was not caused by them.
- They did, at times, leave the outer window open; however the moisture did not enter through that window and they were never instructed not believe that window open.
- They also did not leave the bathroom door open while showering, and they always used the fan.
- When they moved into the rental unit it was summer and they did not have any moisture problems, however as the weather got colder they began to notice high moisture around the window in the rental unit, and they believe that possible mold from this high moisture content was causing health problems.
- They informed the landlords of the problem, however the landlords did not make any attempt to fix the rental unit, they only gave them options to move to various properties which were either not as large, or more expensive.
- The landlords options were not suitable and they therefore decided to move out of the rental property due to health problems, and moved all the belongings out at the end of November 2013.
- They had however not been living in the rental property since November 2, 2013 due to the health issues and are therefore requesting the return of their November 2013 rent.
- They also believe the landlord should be paying their moving costs, and storage locker costs that they had to rent to store some of their belongings.

They are therefore requesting that the landlord's application be dismissed, and that a monetary order be issued as follows:

Return of November 2013 rent	\$850.00
Return of security deposit	\$425.00
Storage locker rental cost	\$261.00
Moving costs	\$310.00
Filing fee	\$50.00
Total	\$1896.00

In response to the tenant's testimony the landlords testified that:

- The reason they did not attempt any repair in the rental unit, was because the tenants asked them not to do so until they had vacated the rental unit for fear that renovations could further the health issues.

Analysis

Landlords claim

It is my decision that the landlords have not met the burden of proving the majority of their claim.

The landlords do not deny that there was a moisture problem in the rental unit, and even stated that it's likely that there was a mold issue, however is my finding that the landlords have not met the burden of proving that that moisture problem was caused by any willful or negligent acts on the part of the tenant.

The landlords have stated that it is their belief that the moisture problem was caused by the tenants leaving a window opened, and showering with the bathroom door open, however they have provided insufficient evidence to support those claims.

I therefore find that it was reasonable for the tenants to vacate the rental unit due to the moisture problems in the rental unit and the possibility of mold spores.

It's also my finding that the landlords have not shown that they offer the tenants a comparable alternative unit to move to.

Therefore it is my decision that the only portion of the landlord's claim that I will allow is the claim for rekeying the locks as the tenants did not deny that they failed to return the keys.

The total amount of the landlord's claim that I have allowed therefore is \$23.24.

It's also my finding that the landlords must bear the cost of the filing fee paid, as I have only allowed A very small portion of their claim.

Tenants claim

It is my finding that the tenants have not established a claim for return of their November 2013 rent, or for moving and storage costs.

The tenants had no moisture problem for a good portion of their tenancy, and there is no evidence to show that the landlords were aware of any moisture problem in this rental unit prior to hearing from the tenants at the beginning November 2013.

Therefore since the problem was not the result of any willful or negligent actions on the part of the landlords, the landlords cannot be held liable for the tenant's loss.

I will however allow the request for return of the security deposit, less the amount I have allowed in the landlords claim.

I will also allow the tenants request for recovery of their \$50.00 filing fee, as I have still allowed a large portion of their claim.

Conclusion

As stated above I have allowed \$23.24 of the landlords claim and the remainder of the landlords claim is dismissed without leave to reapply.

I therefore order that the landlords may retain \$23.24 of the tenant security deposit, and the remaining \$401.76 must be returned to the tenants along with the tenants \$50.00 filing fee for a total of \$451.76.

As stated above the remainder of the tenants claim 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: April 10, 2014

Residential Tenancy Branch

