



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF, MND

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). Landlord JXX (the landlord) applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants' application naming both of the individuals named above as landlords/Respondents asked for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 7, 2014. The landlords confirmed that they received copies of the tenants' dispute resolution hearing package sent by the tenants by registered mail on April 25, 2014. In accordance with sections 89(1) and 90 of the *Act*, I find that both parties were deemed served with one another's dispute resolution hearing packages on the fifth day after their registered mailing. I also find that both parties confirmed receiving one another's written evidence packages, which are properly before me and can be considered in my decision-making on their applications.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Which of the parties are entitled to the security deposit for this tenancy? Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for their applications from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, receipts and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The landlord entered into written evidence a copy of the two-year fixed term Residential Tenancy Agreement (the Agreement) signed by the parties on January 18 and 19, 2014. The tenants said that they moved into the rental unit on February 9, 2014, and vacated the premises on February 21, 2014. According to the terms of the Agreement, the tenancy was to end on February 1, 2016. Monthly rent was set at \$2,000.00, payable on the first of each month, plus utilities. The tenants made a pro-rated payment of their February 2014 rent, but have cancelled all other payments to the landlord. The landlord still holds the tenant's \$1,000.00 security deposit paid on February 10, 2014.

The Agreement contained a signed Addendum which confirmed the landlord's commitment to conduct the following work before the tenants would occupy the rental unit:

1. *Clean the home*
2. *Remove any garbage left behind by current tenants*
3. *Prep and paint living room and any other room that requires it (if walls are significantly dirty or damaged).*
4. *Fix railing and floor of deck once weather permits*
5. *Repair the hole in the door in the kitchen*

The landlord testified that she conducted a joint move-in condition inspection with the tenants when the tenants took occupancy of the premises. The tenants testified that no such joint move-in condition inspection occurred. The parties agreed that the landlord did not prepare a joint move-in condition inspection report. As the tenants abandoned the rental unit, the parties did not participate in a joint move-out condition inspection. The landlord has not created a move-out condition inspection report.

Before the tenancy was to begin, the tenants checked the progress of the landlord's attendance to the commitments made in the Addendum to the Agreement. As the tenants were dissatisfied with the progress being made on repairing and cleaning the rental unit, the tenants contacted the landlord, her agent and the landlord's maintenance person who was working on the rental home.

The landlord and her agent apparently agreed that the maintenance person the landlord had hired was not making sufficient progress on his work. After the tenants moved into the rental unit, the landlord allowed the tenants to hire a cleaner to ready the rental unit for the tenants' use. The tenants remained very dissatisfied with the condition of the house and contacted the landlord and the agent many times over the course of a few days to register their concerns.

On February 15, 2014, the tenants sent the landlord and her agent an email listing many deficiencies and the tenants' concerns about the general state of cleanliness and repair of the rental unit. This list included complaints that there was evidence of a rat infestation that the landlord was not dealing with effectively. The tenants complained that the rental unit was filthy and had caused the tenants to hire cleaners who had spent 13 hours on the home at that point. Although the tenants maintained in this email that the landlord had reimbursed them for 9 of the 13 hours of cleaning thus far, the tenants gave undisputed sworn testimony that this reimbursement was to be given in the form of a reduction in the following month's rent. Since the tenants surrendered possession of the rental unit on February 24, 2014 and did not pay any rent for March 2014, the tenants have not received this reimbursement from the landlord. The tenants also complained that the furnace filter was clogged and the heating ducts needed cleaning. The tenants maintained that the dryer was broken, the fridge and freezer had missing door rails, and various faucets and lights were not working properly. They also complained that garbage had not been removed from the previous tenancy, that the final coat of paint on the living room and hallway had not been applied, and that they had not received more than one set of keys for the rental home. In addition to seeking the repair of these items, the female tenant expressed her view in this email that some form of compensation was in order.

The tenants provided written evidence that on February 18, 2014, the male tenant handed the landlord's agent, identified as Landlord PF in the tenants' application (the agent), a written notice to advise the landlord and her agent that the tenants intended to break their Agreement. The tenants maintained that they sent an email of this notice to the female landlord (the landlord). In this February 18, 2014 document, the tenants listed 22 items they wanted repaired or remedied within 48 hours or they would break their lease as they considered the landlords to have breached a material term of their

Agreement. On that date, the male tenant also handed the agent a proposed resolution of this matter on the basis of the following terms:

1. Return of the tenant's \$1,000.00 security deposit
2. Cleaning \$260.00
3. Moving \$500.00
4. Furnace Filters \$40.00

In addition to the above-noted \$1,800.00 the tenants were then seeking from the landlord, the male tenant also requested the return of the tenants' \$1,750.00 rent cheque for March 2014.

When the tenants were not satisfied with the progress made in resolving the 22 items listed in their February 18, 2014 letter, the tenants vacated the rental unit on February 20, 2014. They sent the landlord and her agent a February 24, 2014 email advising that they had left the rental unit and considered February 24, 2014 to have been the last day of their tenancy. The parties agreed that the tenants returned their keys that day.

The landlord's application for a monetary award of \$3,000.00 included the following description in the Details of the Dispute section of her application:

First they tried to break a 2 yr, lease, then claimed health issues, despite intervention and remediation, then left without notice given the following day via email.

Although the landlord's application requested a monetary award for damage, it would appear that much of the landlord's application sought a monetary award for loss of rent arising out of the tenants' hasty departure from the rental unit, 12 days after the tenants took possession of the premises.

The tenants' application for a monetary award of \$5,954.72 included the following items listed in their Summary of Damages Sought, a document they entered into written evidence:

Item	Amount
Return of Double Damage Deposit	\$2,000.00
Return of Rent Feb 18 – Feb 28, 2014	714.29
Movers	348.00
Moving Supplies	235.25
SC Airfare (Fulltime Childcare during move)	958.50
Cleaners	320.00

BC Hydro Change Address Fee	13.02
Terasen Gas Change Address Fee	28.00
Food	130.48
Pain and Suffering	1,000.00
Furnace Filters	52.63
Canada Post Forwarding Service	54.55
Disbursements Relating to Dispute Resolution (Presumably Filing Fee)	100.00
Total Monetary Order Requested	\$5,954.72

After this tenancy ended, the landlord continued with the repairs and rented the improved premises to a new tenant who commenced paying monthly rent of \$2,500.00 as of March 1, 2014. The landlord testified that the new tenant signed a one-year lease. Although the agent said that the landlord had to spend a lot of extra money to enable her to obtain this additional rent, the landlord and the agent produced little documentation or details to substantiate this assertion.

Analysis

The *Act* allows a tenant to end a tenancy if the landlord has breached a material term of the tenancy agreement and after receiving notification of a request to correct the breach has not done so. Although I have given full consideration to the tenants' allegations, I find that they have fallen far short of demonstrating that the landlord breached a material term of their Agreement. The provisions in the Addendum to clean the rental unit, to remove garbage from the property and to paint the rental are by no means material terms of the Agreement. There is evidence that the process of repairing and cleaning the rental home was admittedly taking longer than anticipated, but the landlord did agree to reimburse the tenants for costs of retaining cleaners of the tenants' choosing to expedite this process.

While health and safety concerns could result in a finding that a landlord had breached a material term of an Agreement, the tenants produced no evidence from any health care professional regarding a deterioration in their health or the health of their family resulting from this tenancy. The tenants admitted that the landlord retained a pest control company almost immediately after they first raised their concerns about a pest infestation. Over the course of this short tenancy, the pest control company attended on three occasions, and on each occasion found no active presence of any rats, although there apparently was evidence of a previous infestation.

As was correctly noted by the agent, the tenants provided the landlord and the agent with an escalating list of deficiencies. This culminated in the male tenant's February 18, 2014 issuance of a 48 hour ultimatum to repair a list of 22 items or the tenants would break their Agreement. Two days later, the tenants vacated the rental unit.

Rather than finding that the landlord breached any material term of the Agreement, I find that the tenants chose to vacate the rental unit when they were not happy with the pace of the repairs that they had requested. This is not sufficient grounds for a tenant to end a two-year fixed term tenancy Agreement that commenced 11 days before the tenants left the rental home.

Analysis – Landlord's Application

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Even in a periodic (month-to-month) tenancy, a tenant is required by section 45(1) of the *Act* to give the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2014, the tenants would have needed to provide their notice to end this tenancy before February 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing. Instead, the tenants chose to abandon the rental unit and retroactively inform them that they had left.

I find very clear and compelling evidence that the tenants were in breach of their fixed term tenancy Agreement because they vacated the rental premises prior to the February 1, 2016 date specified in that Agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for March 2014. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for March 2014. In fact, the landlord provided written evidence and sworn testimony that the landlord was able to re-rent the premises to a new tenant who is paying \$500.00 more each month in rent than would have occurred had the tenants continued their tenancy as required under their Agreement. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent.

In this case, rather than demonstrating a loss in rent, the landlord has provided compelling evidence that she has experienced a significant windfall gain in rent from the tenants' decision to end this tenancy early. Over the one-year period from March 1, 2014 until February 28, 2015, the landlord can expect to receive \$6,000.00 in additional rent from this rental unit than would have been the case had the tenants honoured the terms of their Agreement. Based on this finding, the landlord would have needed to produce evidence of entitlement to a monetary award for damage in excess of \$6,000.00 in order to obtain any monetary award for damage arising out of this tenancy,

I find that there is overwhelming evidence that the rental unit was still in the process of being repaired and cleaned when this tenancy began. The landlord did not follow the requirements of the *Act* in ensuring that a report of any joint move-in condition inspection undertaken was prepared at the beginning of this tenancy. As such, and given that even the landlord's agent admitted that the rental unit was still being prepared for the tenants' occupancy when this tenancy began, I find that the landlord has failed to demonstrate that any repairs that became necessary after the tenants left arose from their very brief stay in this rental unit. For these reasons, I dismiss the landlord's application for a monetary award without leave to reapply, as I find that the landlord has not demonstrated that she has suffered losses or damage arising out of this tenancy.

Analysis – Tenants' Application

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit in full plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, the landlord had 15 days after February 24, 2014, to take one of the actions outlined above. The Residential Tenancy Branch (the RTB) received the landlord's application to retain the tenants' security deposit on March 7, 2014, within this 15-day time period. As such, I find that the tenants' eligibility to recover their security deposit is limited to the \$1,000.00 amount they paid for that deposit. I find that the tenants are not entitled to a monetary award equal to double the value of their security deposit. I order the landlord to return the tenants' \$1,000.00 security deposit plus applicable interest. No interest is payable over this period.

I have also considered the tenants' application for a monetary award for damages and losses arising out of this tenancy. Given that the tenants arbitrarily and precipitously decided to contravene the terms of their two-year fixed term Agreement after staying in the rental home for a total of 11 days, I find little reason to compensate the tenants for anything but the work that the landlord and the agent clearly allowed them to undertake to reduce the landlord's costs and to expedite the work already being conducted by the landlord on this home.

I find that the tenants have demonstrated their entitlement to a monetary award of \$320.00 for cleaning. I issue a monetary award in the tenants' favour in this amount as I am satisfied that the tenants actually incurred these costs with the agreement of the landlord.

I also issue a monetary award in the tenants' favour in the amount of \$52.63 for the replacement of furnace filters in this rental property. I accept this portion of the tenants' claim as neither the landlord nor her agent disputed the tenants' assertion that they did undertake these expenses to replace furnace filters, a cost that would typically be borne by a landlord.

Given the circumstances of the tenants' departure and the lack of time afforded to the landlord by the tenants to complete the requested repairs, I dismiss the remainder of the tenants' application for a monetary award without leave to reapply. In coming to this determination on a balance of probabilities, I see no valid reason why the landlord should be held in any way responsible for the tenants' payment of rent from February 18, 2014 until the end of that month. The tenants inspected the rental unit before the tenancy began and agreed to rent a home that needed considerable work before they could live there. I find the landlord was taking measures to have the work that they were requesting completed in a timely fashion. The landlord retained a pest control company to look after pest related issues and also removed an appliance to obtain repairs. Although the pace of work completed and the thoroughness of the repairs may not have met the tenants' expectations, I find that this did not provide the tenants with the grounds to end their fixed term Agreement almost immediately, nor did it enable them to recover their moving costs from the landlord. I also dismiss the tenants' unjustifiable claim to have the airfare costs of one of the tenants' mothers recovered from the landlord to assist them in looking after the tenants' children. With the exception of the two items noted above, I dismiss this and all other of the tenants' claims for a monetary award without leave to reapply.

As the tenants have been partially successful in their application, I allow them to recover \$25.00 of their filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows them to recover their security deposit, their out of pocket expenses for cleaning and the replacement of furnace filters and a portion of their filing fee:

Item	Amount
Return of Security Deposit	\$1,000.00
Cleaning	320.00
Furnace Filters	52.63
Recovery of \$25.00 of Filing Fee for the Tenants' Application	25.00
Total Monetary Order	\$1,397.63

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application is dismissed in its entirety 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: June 24, 2014

Residential Tenancy Branch

