



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MND, MNR, MNSD, MNDC, FF
TENANT: MNDC, MNSD, RPP, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, for the return of the Tenants' security and pet deposits, for the return of personal property and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on May 27, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on June 27, 2014 in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there other damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?
6. Are the Landlords entitled to unpaid rent and if so how much?
7. Are the Landlords entitled to retain the Tenants' security and pet deposits?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?
3. Are the Tenants entitled to the return of the security and pet deposits?
4. Does the Landlord have property belonging to the Tenants and if so are the Tenants entitled to the return of that property?

Prior to hearing the testimony for both applications the Arbitrator reviewed the events and previous applications leading up to this hearing. The Landlords served the Tenants with a 10 Day Notice for unpaid rent in the amount of \$2,000.00 on April 4, 2014. The Landlords said the Tenants did not pay the rent so he made an application under the Direct Request process with the Residential Tenancy Branch for an Order of Possession and a monetary order for unpaid rent in the amount of \$2,000.00. The application was made on April 15, 2014 and the Tenants were served the Notice of Direct Request on April 16, 2014 via registered mail. The Landlords were successful and they received an Order of Possession with an effective vacancy date of two days after service of the Order on the Tenant and a monetary Order for \$2,000.00. Both Orders were dated April 23, 2014. The Tenant said she paid the rent on April 17, 2014 and then documented evidence shows the Tenant made a request for a review consideration application to the Residential Tenancy Branch on April 25, 2014. The request for the review consideration was to review the decision and orders on the basis that the Tenant believed the Landlords received the decision and orders by fraud. The Tenant was successful in getting a review of the monetary Order but was unsuccessful in a review of the Order of Possession which was left the Order of Possession in full effect and it was dated April 23, 2014 with an effective vacancy date of 2 days after service on the Tenants.

The Tenants were removed from the rental unit on May 6 and 7, 2014 by a British Columbia Supreme Court Order and a Bailiff.

The resulting applications being heard today are monetary claims by both the Landlords and the Tenants.

Background and Evidence

This tenancy started on December 15, 2012 as a fixed term tenancy with an expiry date of April 30, 2013 and then continued on a month to month basis. Rent was \$2,000.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 and a pet deposit of \$1,000.00 in advance of the tenancy.

The Landlord said that he has made this application because he incurred costs to evict the Tenants and there was damage to the rental unit. The Landlord said his claims are as follows:

1. Bailiff costs to evict the Tenants	\$2,701.65
2. Court costs to obtain the Writ of Possession	\$ 120.00
3. Overholding rent from May1 to May 7 (6Days)	\$ 387.10
4. Registered mail costs for the hearing and eviction	\$ 57.24
5. Lost of a Hutch in the unit valued at \$785.00	\$ 785.00
6. Replacement of remotes for the unit	\$ 47.00
7. Replacement of door knobs	\$ 96.28
8. Repair of screen door	\$ 30.81
9. Cleaning and other damage with no receipts (represents the balance of cost cover by the deposits)	\$ 426.57
10. Filing Fee	<u>\$ 50.00</u>
Total	<u>\$4,701.65</u>

The Landlord continued to say that he is also requesting to retain the security deposit of \$1,000.00 and the pet deposit of \$1,000.00. The Landlord said he is requesting a monetary Order of \$2,701.65 to recover the costs he incurred evicting the Tenants and for damage the Tenants caused to his rental unit.

The Tenants' Counsel said that he wanted to speak prior to the Tenant explaining her application so that the reason for the Tenants application would be understood. The Tenants' Counsel said the Tenants incurred many costs as a result of the Landlord acting to quickly on the Writ of Possession. Counsel continued to say the Tenants had not received the decision on the review consideration application until May 9, 2014. Therefore the Tenants did not have formal confirmation of what happened to their application for a review consideration on the Order of Possession and the monetary

Order when they were evicted on May 6 and 7, 2014. The Tenants' Counsel said the Tenants did not have time to move out and they expected some time to organize their move. The Tenants' Counsel said the Tenants have now made a monetary claim as they have incurred costs and expenses that they would not have incurred if they knew their review consideration application for the Order of Possession was unsuccessful. The Tenants' Counsel said the Landlords acted before the review consideration process was completed and this caused damage and loss to the Tenants.

The Tenant said they are applying for compensation for the following items:

1. Storage costs of \$1,211.00 plus \$500.00 for moving	\$1,711.00
2. Fuel costs as a result of the relocation	\$1,051.37
3. Food costs during the eviction	\$ 607.89
4. Loss of sons football equipment due to movers	\$ 206.05
5. Lawyer costs	\$ 300.00
6. Hearing costs	\$ 97.00
7. Return of security deposit	\$1,000.00
8. Return of pet deposit	\$1,000.00
9. Landlord to handle Bailiff costs	<u>\$2,649.15</u>
Sub Total	<u>\$8,622.56</u>
Less unpaid rent for 6 days of May, 2014	<u>\$ 387.10</u>
TOTAL	<u>\$8,235.46</u>

The Tenant continued to say that she is not disputing the 6 days of unpaid rent for May, 2014 in the amount of \$387.10.

The Tenant said she is disputing the Landlord's claim for the hutch of \$785.00 as she did not know the Landlord owned it and when she removed it from the unit, because it fell over and was damaged, she had no idea it was part of the house or the tenancy. The Landlord said the hutch was fixed to the wall just like kitchen cupboards or a bathroom vanity and it was made for the rental unit. The Landlord included a letter from the person who built and installed the hutch for the Landlords. The letter indicates a value of \$785.00 at the time of installation in 2003.

Further the Tenant said there was no move on or move out condition inspection reports completed. As a result it is not possible to prove the condition of the unit at the start of the tenancy or at the end of the tenancy. The Tenant said the movers did some damage to the laundry hinges, the door knobs are in the closet of the bedroom, the fireplace doors are not damaged they are just off their hinge, the fireplace screen was damaged at the start of the tenancy and she said she will return the remotes as she

unpacked them approximately 2 month ago. The Tenant said she does not agree with the Landlords' claims for these damages.

The Landlord said he believes the laundry doors hinges were moved when the Tenant put in new laundry machines and they damaged the hinges. As well he could not find the bedroom door knobs so he replaced them. The Landlord said both the fireplace doors and screens are damaged and he had to replace them. The Landlord continued to say that he also replaced the remotes as the Tenant did not return them and he had no idea if she had them or not. Further the Landlord said the rental unit needed to be cleaned and deodorized because of a smell of dog urine. The Landlord said while doing work at the rental unit he witnessed the Tenants' dogs defecate in the house on two occasions. The Landlord did agree no condition reports were completed but he said the damage was done to the unit as evident by the photographs he submitted.

The Tenant said her dogs are house trained and do not defecate in the house and there is mostly someone at home to let the dogs out. The Tenant continued to say that she takes the dog with her on most occasions. The Tenant said the smell in the house was a moldy smell from water damage in the basement.

The Landlord said there is no water damage in the basement and the rental unit has never been flooded.

The Tenant continued to say the Bailiff cost should be the responsibility of the Landlord as he acted on the eviction Order before the review consideration application results were received by the Tenants.

The Landlord said he paid \$4,000.00 up front to the Bailiff and then was refunded a portion of his payment when the actual Bailiff costs were completed. The Landlord said he paid the Bailiff \$2,701.65.

Further the Landlord said he phoned into the Residential Tenancy Branch on May 2, 2014 to get the results of the decision on the Tenants' review consideration application. The Landlord said he was told by phone on May 2, 2014 that the Order of Possession was in full effect. The Landlord continued to say that he emailed the Tenant with that information on May 2, 2014 and then he continued the eviction process.

The Tenant said that she too phoned the Residential Tenancy Branch on May 5, 2014 and she was told the decision would not be given to her by phone and she would have to wait for the decision by mail. The Tenant did acknowledge the Landlord's email of May 2, 2014 and that she knew her application for a review consideration for the Order of Possession had failed and the Order of Possession was in full effect. The Tenant said she believed that she had some time to make arrangements to move out before being evicted.

The Tenant Counsel conclude his remarks by saying the Tenant received the Landlord's text about the review consideration decision at 5:10 p.m. on Friday May 2, 2014 so there was no opportunity for the Tenant to confirm the information until Monday May 5, 2014. Counsel said the Tenant did this and was told to wait for the decision in the mail. Counsel continued to say the Landlords moved to quickly in evicting the Tenants as the Landlords should have waited for the Tenants to receive the decision on the review consideration by mail. As a result the Landlords caused the Tenants the expenses of moving. The Tenants Counsel suggested that section 84 (1) of the Act says that a decision or order of the Director can be a judgement of the Court after the period for review has expired. The Counsel suggested that the time the review expires is after the applicant receives the decision or order. In this case the Tenants had not received the review consideration decision until May 9, 2014 two days after the eviction.

The Landlord said in closing that he has done everything according to the law and he also informed the Tenant of the results of the review consideration application so the Tenant was fully aware of the situation. As well the Landlord said he had no problem contacting the Residential Tenancy Branch and there was no issue about receiving the decision on the review consideration by phone. Further the Landlord said the Tenant had received 5 other 10 Day Notices for late rent payment so the Tenants were aware of what a 10 Day Notice to End Tenancy for Unpaid Rent was and how to deal with the Notices.

The Tenant confirmed they had received other 10 Day Notices to End Tenancy for Unpaid Rent. The Tenant said she was mistaken in that she thought she had 10 days not 5 days to pay the rent when she received a 10 Day Notice to End Tenancy for Unpaid Rent. The Tenant said this was her mistake.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As both parties agree the Tenants owes the Landlords \$387.10 for 6 days of overholding rent in May, 2014 I award the Landlord this amount for unpaid rent.

The Tenants application is a monetary claim and request for the return of the security and pet deposit in a total amount of \$8,235.46. The Tenants Counsel explained that the Tenants application is based on their belief that the review consideration process was not complete until the Tenants received the formal decision on the review consideration, which the Tenant received by mail on May 9, 2014. The Tenants' Counsel indicated that the Landlord obtained the Writ of Possession and hired a Bailiff and evicted the Tenants from the rental unit on May 6 and May 7, 2014 which was 2 days prior to the

Tenants receiving the review consideration decision. The Tenant and the Tenants' Counsel said that the Landlord acted too quickly and this precluded the Tenants from organizing and conducting the move out on their own. As a result the Tenants incurred expenses and costs which the Tenants said they would not have incurred if the Landlords would have waited for the review consideration process to complete.

The question of when is the review consideration process complete, is central to the Tenants claims therefore I will address that first. The Act does not specifically say when a review consideration process is complete; therefore it is left to the Arbitrator to decide what is reasonable. It is my opinion and it is the convention in the Residential Tenancy Branch to consider a decision complete when it is uploaded to system. In this case the decision was uploaded on May 2, 2014 and the decision was available to the applicant and the respondent to access through an Information Officer at the Residential Tenancy Branch on May 2, 2014. The Landlord phone on May 2, 2014 and received the decision information and he texted the Tenants with the decision results on May 2, 2014. The Tenant said that she was told on May 5, 2014 that she could not get the information by phone and would have to wait for the decision by mail. I have made inquiries about providing decision information by phone to clients and there is no restriction on it to parties involved in the dispute and it is done commonly. Consequently I find the Landlord did not act too quickly in the eviction as the effective vacancy date on the Order of Possession granted with the original decision was well past and both parties knew the results of the review consideration decision. As the Tenants were aware of the decision results on May 2, 2014 and did not make any arrangements with the Landlords to move out the Landlord acted appropriately in obtaining a Writ of Possession from Supreme Court and hiring a Bailiff to remove the Tenants from the rental unit.

With regard to the Tenants claims for loss or damage as a result of the eviction and resulting moving costs; I find moving costs are the responsibility of the Tenants. Therefore I dismiss without leave to reapply all the expense claims in the Tenants application resulting from the eviction and or moving costs as the Tenants were overholding past the effective vacancy date. This overholding caused the Landlord to hire a Bailiff to remove the Tenants. The following claims by the Tenants are dismissed without leave:

1. Storage costs of \$1,211.00 plus \$500.00 for moving	\$1,711.00
2. Fuel costs as a result of the relocation	\$1,051.37
3. Food costs during the eviction	\$ 607.89
4. Loss of sons football equipment due to movers	\$ 206.05
5. Lawyer costs	\$ 300.00
6. Hearing costs	\$ 97.00
7. Landlord to handle Bailiff costs	<u>\$2,649.15</u>

With respect to the Landlords claims for costs to remove the Tenants from the rental unit; I find for the Landlords as the Landlords followed the procedures to evict overholding tenants. I award the Landlord the following claims:

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|---|------------|
| 1. Bailiff costs to evict the Tenants | \$2,701.65 |
| 2. Court costs to obtain the Writ of Possession | \$ 120.00 |

Further I accept the Landlords testimony and evidence in the absence of any supporting evidence from the Tenants with respect to the missing hutch; I find the hutch was a fixture in the rental unit like kitchen cupboards or a bathroom vanity. Since the Tenants did not ask or tell the Landlord that they removed it; I award the Landlords \$785.00 as compensation for the lost hutch.

With regard to the remotes the Tenants have had possession of the remotes for two months after unpacking them and they have not tried to return the remotes to the Landlords therefore I find for the Landlords and award the Landlords \$47.00 as compensation to replace the remotes.

Both Parties agreed there were no condition inspection reports completed at the start or end of the tenancy therefore; I find the Landlord has not established a base line for the condition of the rental unit at the start of the tenancy. Consequently the Landlord is unable to prove how much damage if any was done to the rental unit. In order to be successful in a damage claim an applicant must establish the original condition of the unit to measure any damage from. Consequently I dismiss without leave to reapply the following claims by the Landlord for damage:

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| 1. Replacement of door knobs | \$ 96.28 |
| 2. Repair of screen door | \$ 30.81 |
| 3. Cleaning and other damage with no receipts | \$ 426.57 |
| (represents the balance of cost cover by the deposits) | |

Further costs like registered mail and photocopying to prepare for the hearing are considered costs relating to the hearing process not the tenancy and as such these costs are not eligible claims. I dismiss the Landlords' claims for registered mail costs of \$57.24.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit and pet deposit in partial payment of the Landlords' claims. The Landlords will receive a monetary order for the balance owing as following:

1. Bailiff costs to evict the Tenants	\$2,701.65
2. Court costs to obtain the Writ of Possession	\$ 120.00
3. Overholding rent from May1 to May 7 (6Days)	\$ 387.10
4. Lost of a Hutch in the unit valued at \$785.00	\$ 785.00
5. Replacement of remotes for the unit	\$ 47.00
6. Filing Fee	<u>\$ 50.00</u>
Total	<u>\$4,090.75</u>
Less: Security Deposit	\$1,000.00
Pet Deposit	<u>\$1,000.00</u>
Subtotal:	<u>\$2,000.00</u>
Balance Owing	<u>\$2,090.75</u>

As the Tenants were unsuccessful in this matter I order the Tenants to bear the \$100.00 cost of the filing fee for their application that they have already paid.

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Conclusion

A Monetary Order in the amount of \$2,090.75 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenant'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: September 03, 2014

Residential Tenancy Branch

