



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, for the return of the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on December 10, 2014. Based on the evidence of the Tenants, I find that the Landlord was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there losses or damages to the Tenants and are the Tenants entitled to compensation?
2. Are the Tenants entitled to the return of their security and pet deposits?

Background and Evidence

This tenancy started on June 1, 2014 as a fixed term tenancy with an expiry date of June 1, 2015. Rent was \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 and a pet deposit of \$300.00 on June 1, 2014. The Tenants said no condition inspection report was completed. The Landlord said a video of the rental unit was made at the start of the tenancy but no condition inspection report was completed and signed by the parties.

The Tenants said that there were a number of issues that arose during the tenancy and the Landlord did not seem interested in resolving them so the Tenants filed for dispute resolution to discuss these matters. The Tenants continued to say when they served the Landlord's husband on December 5, 2014 he became angry and assaulted them

with an ice spade. The Tenants said the Landlord's husband chased them out of the yard and hit the male Tenant with the ice spade. The Tenants said there are assault charges pending against the Landlord's husband. As a result the Tenants said they were afraid to live in the rental unit and physically moved out on December 5, 2014. The Tenants said they finished moving their belongings on December 13, 2014. As well the Tenant said they texted the Landlord that they had moved out and gave the Landlord their forwarding address on December 13, 2014.

As a result of being assaulted by the Landlord's husband the Tenants ended the tenancy and are now claiming monetary compensation for the following:

1. Return of December, 2014 rent in the amount of \$600.00
2. Return of the security deposit in the amount of \$300.00
3. Return of the pet deposit in the amount \$300.00
4. Return of prepaid utilities in the amount of \$200.00
5. Recover of the filing fee in the amount of \$50.00

The Tenants said their total claim is for \$1,450.00.

The Landlord said she agrees that her husband had chased the Tenants and hit the male Tenant with an ice spade and there are Police charges pending against him. The Landlord continued to say the Tenants had provoked her husband by trespassing on their property and her husband has a severe health condition which may have contributed to his actions. The Landlord continued to say the Tenants have been looking for ways to end the tenancy over the last few months and it has been very frustrating for the Landlord to deal with all the Tenants issues. The Landlord said there may be charges filed with the Police against the Tenants as well.

Further the Landlord said she has not received formal written notice from the Tenants to end the tenancy and so she thought the Tenants abandoned the rental unit on January 1, 2015. The Landlord said she did receive a text from the Tenants on December 13, 2014 saying they had moved out and the Tenants gave her their forwarding address in that text as well. The Landlord said this method of service to give notice to end a tenancy is not an approved method under the Act.

Further the Landlord said she does not agree that the Tenants should get their December, 2014 rent returned as it is a fixed term tenancy and the Tenants lived in the unit for part of December, 2014. As well the Landlord said there is damage to the unit so the Landlord would like to retain the security and pet deposits to cover the costs of repairing the damage to the unit. With respect to the prepaid utilities the Landlord agreed the Tenant should receive the unused portion of the prepaid utilities.

In closing the Landlord said this has been a very frustrating tenancy and she believes the Tenants have conspired to end the tenancy and profit from the tenancy for a number

of months. As well the Landlord said they have tried to help the Tenants and deal with any issues that have come up in a timely manner.

The Tenants said in closing that they were attacked by the Landlord's husband and they were afraid to live in the unit so they moved out. The Tenants said the claims they have made are not for making a profit but is what is rightfully theirs as they lost use of the rental unit in December, 2014. They believe there is no damage to the unit and the unit was cleaned when they left. Further the prepaid utilities were promised to them for doing work on the rental unit by the Landlord.

Analysis

Section 44 (e) of the Act says a tenancy may end if the tenancy agreement is frustrated.

As both parties agreed the Landlord's husband, who is also signed on the tenancy agreement, assaulted the Tenants by chasing them with an ice spade and that he Landlord's husband hit the male Tenant with the ice spade; I find that the Tenants' have established grounds to prove the tenancy was frustrated. The Tenants had reasonable grounds to fear that further physical assaults from the Landlord's husband could be made against them. I find the tenancy ended on December 13, 2014 the day the Tenants' moved their belongings out of the rental unit due to a frustrated tenancy agreement.

Consequently I award the Tenants a rent rebate from December 13 to December 31, 2014 in the amount of ($\$600.00/31\text{days} = \$19.35/\text{day} \times 18 \text{ days} = \348.39).

As well the parties both agreed that no move in condition inspection report was completed and signed therefore the Landlord is unable to prove the condition of the unit at the start of the tenancy. Section 24 of the Act says if no move in condition inspection report is completed then the Landlord's claim on the Tenants' security and pet deposits is extinguished. I order the Landlord to return the Tenants security and pet deposits within 15 days of this decision or by January 20, 2015.

Further as both parties agreed that the Tenants are entitled to the prepaid utility expense; I award the Tenants ($\$200.00/ 31 \text{ days} = \$6.45/\text{day} \times 49 \text{ days December } 13, 2014 \text{ to January } 31, 2015 = \316.13)

As the Tenants have has been successful in this matter, the Tenants are also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenants will receive a monetary order for the balance owing as following:

Rent rebate:	\$ 348.39
Security deposit	\$ 300.00
Pet deposit	\$ 300.00
Utility rebate	<u>\$ 316.13</u>

Balance Owing	\$ 1,264.52
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Conclusion

A Monetary Order in the amount of \$1,264.52 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 05, 2015

Residential Tenancy Branch

