



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TENANT: MNDC, MNSD, FF, O
LANDLORD: MND, MNDC, MNR, MNSD, FF

Introduction

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

The Landlord did not attend the hearing which lasted from 2:00 p.m. to 2:25 p. m. on March 3, 2015. Consequently the Landlord's application was not supported by evidence or testimony. As well the Tenants said the Landlord did not serve them with his application and hearing package. As a result I dismiss the Landlord's application without leave to reapply due to lack of evidence and lack of service.

The Tenant 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 Tenant's security deposit and pet deposit and to recover the filing fee for their applications.

Service of the hearing documents by the Tenants to the Landlord were done by posting the documents in the Landlord's mail box on August 12, 2014 and by registered mail on October 4, 2014, both in accordance with section 89 of the Act.

Issues to be Decided

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?

Background and Evidence

This tenancy started on April 15, 2014 as a fixed term tenancy for 6 months with an expiry date of October 15, 2014. Rent was \$900.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 and a pet deposit of

\$450.00 both on April 6, 2014. The Tenants said no move in or move out condition inspection reports were completed for this tenancy.

The Tenants said they wrote a letter to the Landlord on August 2, 2014 advising the Landlord they were moving out of the rental unit on or before September 1, 2014. The Tenants said the reason they were ending the tenancy before the fixed term on the tenancy agreement was because there was a water issue in the unit so they only had water at random times. The Tenants said the Landlord refused to fix the water issue. Having no water for periods of time and the Landlord refusing to repair the water problem was a breach of the tenancy agreement and therefore the Tenants felt in their rights to move out of the unit prior to the expiration date on the tenancy agreement. The Tenants continued to say the bathroom water issue happened on July 17, 2014 and they did not have dependable water for the rest of the tenancy. The Tenants said they are requesting a rent rebate of 2 month's rent in the amount of \$1,800.00 as compensation for no water for most of the time after July 17, 2014.

The Tenants also said they moved out because the Landlord entered their rental unit whenever he wanted to without written notice. The Tenant said this happened many times and she submitted a list of dates in June and July, 2014 as evidence. As well the female Tenant said the Landlord entered their rental unit on June 24, 2014 without notice and he was in his underwear. The female Tenant said this was unacceptable for her and she wanted to move out of the unit.

Further the female Tenant said she lost two days of wages in the amount of \$279.00 and she is requesting to recover this loss from the Landlord. The female Tenant said she missed work due to lack of sleep caused by the Landlord being noisy and the stress the Landlord caused her. The Tenant said she did not submit any evidence to support this claim.

As well the Tenants said the Landlord used their wedding towels to clean up the water leak in the bathroom and this ruined the towels. The female Tenant said there were 8 large towels at \$20.00 each and 2 small towels at \$10.00 each. The Tenants said they are claiming \$180.00 for loss of towels. The Tenants submitted photographs to show their towels were used to clean up the water issue in the bathroom.

The Tenants also requested to recover their security and pet deposits in the total amount of \$900.00 and to recover the filing fee for both applications at \$50.00 each for a total of \$100.00. The Tenants said the Landlord refused to return the deposits as he said they move out prior to the expiry date on the tenancy agreement.

Analysis

As the Landlord did not attend the hearing I am dismissing the Landlord's application due to lack of evidence and for lack of service of his documents to the Tenants. Consequently I am basing my decision on the Tenants' evidence and the balance of probability of the events during this tenancy.

First as the Landlord did not complete any condition inspection reports pursuant to sections 24 and 36 of the Act, the Landlords claim against the Tenants security and pet deposits for damages is extinguished. I order the Landlord to return the Tenants' security deposit of \$450.00 and the Tenants' pet deposit in the amount of \$450.00.

Secondly with respect to the Tenants claim for a rent rebate of two months in the amount of \$1,800.00 for the lack of water in the unit from July, 17, 2014 until the end of the tenancy and for the Landlord entering the unit without notice many times during June and July, 2014 I find.

Problems can happen in any tenancy and with any structure including water leaks and water problems. Pursuant to section 32 of the Act it is the Landlords responsibility to make repairs to the property to maintain the property as safe and habitable. When a Landlord does not repair items that they are aware of, it devalues the tenancy and then the Landlord is required to pay compensation to the tenants. In this situation I find the tenancy was devalued by the water not being available on demand from July 17, 2014 to the end of the tenancy. Consequently I order the Landlord to compensate the Tenants pursuant to Section 67 of the Act. The Tenants did have use of the rental unit and they said they did have water randomly therefore the tenancy was only partially devalued. I find that the tenancy was devalued by 1/3 as it restricted the Tenants use of the unit. Therefore I award the Tenants $\frac{1}{3} \times \$900.00$ per month = \$300.00 / 30 days in a month = \$10.00 per day X 44 days from July 17, 2014 to the end of the tenancy September 1, 2014 = \$440.00.

Further section 29 of the Act states a Landlord must give proper Notice to the Tenant or obtain the tenants permission to enter the rental unit. If a Landlord does not give proper written notice to enter the rental unit a tenant can claim loss of quiet enjoyment of the unit and may be awarded compensation for the loss of quiet enjoyment. From the Tenants testimony and the balance of probabilities I accept the Tenants testimony that they incurred a loss of quiet enjoyment in the rental unit by the Landlord entering the unit without proper notice. As the female Tenant said the Landlord entered the unit every few days unannounced and on one occasion in his underwear; I find for the Tenants and I award the Tenants \$500.00 in compensation for loss of quiet enjoyment of the rental unit due to the Landlord entering without proper notice.

With regard to the Tenants application for loss of towels due to the towels being used to clean up water; I have reviewed the photographs and I agreed the towels were used to clean up the water in the bathroom, but there is no evidence the towels were ruined or

could not be cleaned and used again. I dismiss the Tenants claim for \$180.00 for loss of towels due to lack of evidence.

Further the female Tenant said she lost \$279.00 of wages due to lack of sleep and stress caused by the Landlord. The Tenant has not submitted any evidence to support this claim therefore I dismiss the claim for lost wages due to lack of evidence.

As the Tenants have been partially successful in this matter, they are also entitled to recover from the Landlord the \$100.00 filing fee for these proceedings. The Tenants will receive a monetary order for the balance owing as following:

Security and pet deposits:	\$ 900.00
Loss of services (use of water)	\$ 440.00
Loss of quiet enjoyment	\$ 500.00
Recover filing fee	\$ 100.00
Subtotal:	\$ 1,940.00
Balance Owing	\$ 1,940.00

As the Landlord was unsuccessful in this matter I order the Landlord to bear the \$50.00 filing fee for his application that he has already paid.

Conclusion

A Monetary Order in the amount of \$1,940.00 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.

The Landlord'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: March 03, 2015

Residential Tenancy Branch

