



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O, MNR, MND, MNDC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, 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 issue is whether or not either the landlord or the tenants have established monetary claim against the other, and if so in what amount.

Background and Evidence

This tenancy began on November 2, 2013 with a fixed term tenancy ending on October 31, 2014.

The monthly rent was \$1725.00 payable on the first of each month.

The tenants vacated the rental unit on July 28, 2014 and returned the keys to the landlord on August 8, 2014.

The moveout inspection was completed on August 8, 2014 and on the moveout inspection report the tenants agreed to allow the landlord to keep \$257.00 of their security deposit to cover cleaning, carpet cleaning, lock replacement, and bulb replacement.

On August 8, 2014 the landlord filed an application for dispute resolution claiming a total of \$1972.00 and subsequently amended that application on February 11, 2015 increasing the amount of the claim to \$5422.00.

The total claim that the landlord is requesting is as follows:

Carpet cleaning	\$147.00
Lock change	\$50.00
Two hours of cleaning	\$50.00
August 2014 lost rental revenue	\$1725.00
September 2014 lost rental revenue	\$1725.00
October 2014 lost rental revenue	\$1725.00
Filing fee	\$50.00
Total	\$5472.00

On February 27, 2015 the tenants filed a counterclaim as follows:

Return of security deposit	\$862.50
Illegal rent increase payment	\$25.00
Second illegal rent increase payment	\$25.00
Filing fee	\$50.00
Total	\$962.50

The landlord stated that on the moveout inspection report the tenants had agreed to pay \$257.00 to cover the cost of carpet cleaning, changing the locks, replacing a light bulb, and two hours of cleaning.

The landlord further stated that the claims for lost rental revenue are due to the fact that the tenants breached the fixed term tenancy agreement and as a result he lost rental revenue for the months of August 2014, September 2014, and October 2014.

The landlord further stated that he did not even receive the keys back from the tenants until August 8, 2014.

The landlord further stated that he attempted to re-rent the unit and listed a total of 85 adds on Kijiji Canada and although he had some people come to view the rental unit, he did not find a qualified renter until after the term of the lease has expired.

The landlord therefore feels that the tenant should be held liable for the full amount claimed above.

The tenants testified that they did agree to allow the landlord to keep \$257.00 of their security deposit to cover carpet cleaning, changing the locks, two hours of cleaning, and replacing light bulbs.

The tenants also stated that they are willing to pay the August 2014 rent, as they did not return the keys until August 8, 2014; however they do not believe they should have to pay any further rent because they believe the landlord breached their right to quiet enjoyment and therefore they had the right to end the tenancy early.

The tenants stated that the landlord had given them a \$25.00 rent increase which they had paid for a couple of months before they discovered that it was an illegal rent increase and therefore they informed the landlord that they would no longer pay the extra \$25.00.

The tenants also stated that when they inform the landlord that his increase was illegal, the landlord became very aggressive towards them and started yelling, claimed it was not a rent increase, it was an increase in utilities, blamed us for the cost of the extra utilities, and said good luck living here for the rest of the lease.

Further the tenants stated that after they disputed the rent increase and inform the landlord they would no longer pay it, the landlord cut off their HD cable television box, and only supplied air conditioning when he was home. Whenever the landlord went out the air-conditioning would stop and it would not come back on until the landlord returned. Since they had no access to the thermostat they had no way of controlling the air-conditioning themselves and their rental unit became unbearably hot.

The tenants testified that landlord also became very aggressive and hostile towards them and would do things like stand outside the rental unit and wait for them to come home so that he could confront them. They found this behavior very intimidating and she (the female tenant) stated she was afraid of the landlord.

As stated above the tenants stated that they considered the landlord's actions a breach of their right to quiet enjoyment of the rental property which they considered to be a material term of the tenancy.

The tenants stated that they should only be liable for the August 2014 rent, less the remainder of their security deposit, and less the two \$25.00 illegal rent increase payments they made before discovering that the rent increase was illegal.

The tenants also stated that when they moved out of the rental unit the landlord sent a threatening e-mail to them that made them fear for their safety, making comments like "I know when and where you work, I know what you drive", made threats to negatively affect their credit rating and threatened to make things ultimately more expensive for them. After receiving this letter they were even more fearful of the landlord and informed him that if he came near their place of work they would call the RCMP.

In response to the tenants testimony the landlord stated that he does not believe he gave an illegal rent increase, because although it does state that rent is \$1725.00 on the front of the tenancy agreement, the addendum to the tenancy agreement under section 25 states:

- Rent breakdown is as follows: \$1600 monthly rent (including washer/dryer and microwave), plus \$125 monthly utilities (including Hydro, gas, water, basic cable, and basic wireless Internet).

The landlord therefore argued that the increase he requested was for an increase in utilities, and was not an increase in the rent.

In further response to the tenants testimony the landlord stated that only basic cable was included in the tenancy agreement, and although he had allowed the tenants cable box to be hooked up to the cable at the beginning of the tenancy, he was not required to do so, and therefore when the tenants disputed the \$25.00 utility increase, he had that cable box removed from the system. He still however provided basic cable.

The landlord adamantly denied ever turning off the air-conditioning, and stated that it was on that timed system and went on and off automatically.

The landlord admits that when the tenants phoned him to state that they were no longer going to pay the \$25.00 utility increase he did get into a heated argument with them, however he states that it was heated on both sides, not just his side.

The landlord also admits that he did wait outside to confront the tenants as the tenants as they would not respond to phone calls, or texts and therefore if he needed to get a hold of them for any reason, such as viewings of the rental property, that was the only way he could make contact with them.

The landlord further stated that the e-mail he sent to the tenants was in no way a threat to their safety, it was simply a statement of facts as to how he intended to collect the debt that he believes is owed to him, and pointing out to the tenants that if they failed to pay their debt it could certainly negatively influence their credit rating. The landlord further stated that at the time that he sent the e-mail, the tenants had moved out of the rental unit and had failed to return any keys. It was not until later, on August 8, 2014, that the tenants finally returned the keys and participated in a walk-through.

In response to the landlord's further statements, the tenant stated that the landlord did not even supply them with basic cable as they contacted the cable company and the cable company inform them that there was no legal Cablevision provided to the upstairs of that rental unit. Further, since the beginning of the tenancy the landlord had allowed their use of their HD cable box, and therefore they believe that he had the obligation to continue allowing the use of that HD cable box and removal of that service was an intimidation tactic, and retaliation for them disputing his illegal rent increase.

The tenants stated that they do not believe the landlords claim that the air conditioner was on a timer, as it always went off when he left and never came back on until he returned, and they fail to see how a timer could operate that way.

The tenants further stated that when they informed the landlord that they were no longer going to pay the illegal rent increase, it was the landlord who became aggressive and intimidating on the phone and caused the argument that ensued.

Further the tenant state that they also believe that the landlord confronting them outside the rental unit was also an intimidation tactic, as the landlord had the right to post the 24 hour notice of entry if he had wanted to show the rental unit rather than confronting them when they arrived home. They found this tactic frightening and intimidating, and it made it very uncomfortable for them to live in the rental unit for the remainder of their tenancy.

Analysis

First of all, it is my finding that the \$25.00 utility increase that the landlord gave to the tenants was in fact an illegal rent increase.

The landlord claims that because the definition of rent in the addendum states that the rent was \$1600.00 per month and the utilities were \$125.00 per month, an increase in the utilities was not an increase in the rent; however it is my finding that since the amount listed as total rent under section 3 of the tenancy agreement is \$1725.00 per month, the \$125.00 has been made a part of the monthly rent and therefore the landlord cannot increase the utility amount separately.

Further in support of the fact that the total rent is \$1725.00 per month is the fact that the landlord charged a security deposit of \$862.50 which is one half of \$1725.00, not one half of \$1600.00 which is what it would be if the rent was actually \$1600.00 per month.

I therefore find that the tenants were within their right to stop paying the extra \$25.00 per month, and they also have the right to be credited with the two \$25.00 overpayments for a total of \$50.00.

Secondly, it is also my finding that the landlord did breach the tenant's right to quiet enjoyment of the rental property and therefore the tenants did have the right to end the tenancy before the end of the fixed term.

Although the tenancy agreement does state that only basic cable was included, the landlord had allowed the connection of the HD cable box with the Cablevision right from the beginning of the tenancy and therefore the landlord is bound by that action to continue allowing the connection of the HD cable box, and therefore when the landlord removed that HD cable box that can be considered a breach of their quiet enjoyment of the rental property.

In fact Residential Policy Guideline 6 states that interference by a landlord may form the base of a claim for breach of the covenant of quiet enjoyment, and even includes the following examples: (the sections I have put in bold are the sections that apply in this case)

- unreasonable and ongoing noise;
- persecution and **intimidation**; -
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause; -

- **intentionally removing or restricting services**, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or;
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Further it is my finding, on the balance of probabilities, that the landlord removed the HD cable box as an intimidation tactic and as retaliation for the tenants disputing the illegal rent increase.

I also find that the landlords intimidating behavior towards the tenant when they disputed his rent increase was also a breach of their right to quiet enjoyment. The tenants had the right to come and go from the rental unit without fear of being confronted by the landlord against their will, and although the landlord claims it was the only way they could make contact with them, I do not accept that claim as I fail to see why the landlord could not use registered mail, post documents on the door, or any other methods allowed under the Residential Tenancy Act for service of documents on the tenants.

I therefore will not allow the landlords claim for lost rental revenue for the months of September 2014, or October 2014.

Conclusion

The total amount of the landlord's claim that I have allowed is as follows:

Amount of security deposit agreed-upon during the moveout inspection	\$257.00
August 2014 rental revenue	\$1725.00
Filing fee	\$50.00
Total	\$2032.00

The remainder of the landlords claim is dismissed without leave to reapply.

The total amount of the tenant's claim that I have allowed is as follows:

Security deposit	\$862.5
First rent overpayment	\$25.00
Second rent overpayment	\$25.00
Filing fee	\$50.00

Total	962.50
-------	---------------

The remainder of the tenants claim is dismissed without leave to reapply.

I have therefore set off the amount allowed in the tenants claim against the amount allowed in the landlords claim, and have issued an order for the tenants to pay \$1069.50 to the landlord.

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*.

NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON MARCH 11, 2015, WHICH HAD A CLERICAL ERROR IN WHICH I DEDUCTED AN AMOUNT FROM THE SECURITY DEPOSIT TWICE. THE CORRECTED PORTIONS ARE IN BOLD ABOVE

Dated: March 26, 2015

Residential Tenancy Branch

