Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, MND, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and recovery of their security deposit and a cross-application by the landlords for a monetary order, an order to retain the security deposit and an order to recover their filing fee. Both parties participated in the conference call hearing.

At the hearing, the tenants advised that they did not receive a copy of the landlords' application for dispute resolution and only had some of the landlord's evidence. The landlords testified that they sent all of their documentation to the tenants at the forwarding address provided by the tenants which was also the address for service the tenants provided on their application for dispute resolution. The tenants advised that this address was a business address and they did not receive mail at this address.

The purpose of giving landlords a forwarding address is to provide an address at which tenants can be served with documents related to the tenancy. For some unknown reason, the tenants consciously chose to give the landlords an address at which they did not receive mail and further chose to give the same address as their address for service on their application for dispute resolution. The tenants claimed that they did not know that they had to provide an address at which they could receive mail, despite the fact that their application clearly stated that the address was the "address for service of documents or notices – where material will be given personally, let, faxed or mailed".

I found that the tenants made a deliberate choice to conceal their whereabouts from the landlords and prevent the landlords from serving any documents on them and therefore cannot argue that they did not receive the landlords' application. The hearing proceeded despite the tenants having no advance knowledge of the landlords' claim and having received only some of the evidence, which was provided to them by someone at the business address who signed for the evidence package which was sent

to the tenants at the business address. The tenants agreed that the hearing should proceed.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Are the tenants entitled to the return of their security deposit?
Are the landlords entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on April 15, 2014, that rent was set at $2,600.00 per month and that the tenants paid a $1,000.00 security deposit. They further agreed that the tenants vacated the rental unit on or about October 15 and that they did not pay rent in the last month of their tenancy. The rental unit is a home in which the lower floor features a self-contained suite (the "Lower Suite"). I address the claims of the parties and my findings around each as follows:

Tenants' claims

Rent recovery: The tenants seek to recover $7,800.00 which represents half of the rent paid for 5 months of the tenancy in which they could not use the Lower Suite. The tenants testified that within the first week of the tenancy, a significant leak developed and on April 19 they reported to the landlord that a significant amount of water was pouring from the ceiling into the kitchen of the Lower Suite. The tenants initially sated that it was more than one month before the landlord investigated the problem, but when presented with the landlord's invoice for plumbing completed on April 23, they changed their testimony to say that someone attended the unit within a few days but the problem was not completely resolved until May. The tenants claimed that the leak was constant until May when the plumber finally discovered the source of the problem, which was behind the refrigerator on the upper floor. The tenants testified that they shut off the water main to the entire house for a month and only turned the water on when it was needed. The tenants testified that other leaks developed under the sink and in the main bathroom and that the landlord did not perform repairs in a timely manner. They claimed that the various leaks were not fully resolved until July.

The tenants testified that when the water was leaking into the Lower Suite, it leaked onto the oven and caused the oven to short out, rendering it unusable. The tenants testified that when they were investigating the leaks, they discovered live wires and hanging wires discovered that the junction boxes were incorrectly wired. They testified that in September they contacted the BC Safety Authority and asked them to conduct

an inspection of the unit and testified that when an inspection was completed on September 9, the inspector told them to immediately unplug the oven and not use it again as it was unsafe. The tenants submitted a copy of the site inspection report which states as follows:

> Unsafe electrical non-compliances were found and require all electrical equipment non-compliances to be corrected by a licensed electrical contractor with an electrical permit. Correction of all non-compliances are required as documented in certificate of electrical inspection assessment checklist.

The tenants testified that the Lower Suite was never fully functional as there were electrical issues, leaks and drywall work required. They further testified that the dishwasher did not work at all during the tenancy and that they reported it to the landlord on the first day of the tenancy, but it was not repaired. The tenants testified that because the unit was declared to be unsafe on September 9, they were forced to stay in a hotel close to the rental unit from October 14 – 16 and in a hotel in a city approximately 400 kilometres from the rental unit from October 16 – 23.

The landlord testified that the original leak was completely fixed on April 23 as evidence by the plumber's invoice and that other leaks were immediately addressed as they developed. He acknowledged that the drywall work took some time, but he had arranged with the tenant to do this work and on May 16 he gave the tenants $1,300.00 to compensate him for inconvenience and costs incurred for the work performed. The landlord argued that this payment represented a full and final settlement of all claims prior to that point. He testified that he inspected the dishwasher and found that it functioned normally, but dishes needed to be rinsed prior to loading them in the dishwasher. He stated that he advised the tenants of this.

The tenants acknowledged that they received a $1,300.00 payment but argued that it was inadequate to compensate them for the loss of use of the rental unit. They also agreed that they had made arrangements to do the drywall repair work in exchange for compensation.

The *Residential Tenancy Act* (the "Act") establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent's action or inaction;

3. Proof of the value of that loss; and
4. (if applicable) Proof that the applicant took reasonable steps to minimize the loss.

The tenants bear the burden of proving each element of this test. In this case, I find that the tenants accepted $1,300.00 in full satisfaction of any claims arising prior to May 16. Although the tenants suffered some inconvenience as a result of the leak and resulting repairs, I find that they accepted this compensation and are now estopped from arguing that it is inadequate. As for problems arising after May 16, the tenants bear the burden of proving that they suffered some loss as a result of the landlords' failure to comply with the Act or tenancy agreement. I find that most of the problems described by the tenants were very quickly repaired and that the tenants did not suffer losses to a degree which would attract compensation. There is no evidence of ongoing communication regarding the dishwasher and I find that the tenants accepted that the dishes simply required rinsing before being loaded in the dishwasher. I accept that the tenants were unable to use the oven in the lower suite, but the tenants claim that the oven was damaged by a leak which occurred in June. While they claim to have reported that the oven was not working, the landlords claimed that they did not hear that the oven was damaged until they sent a plumber to address a third leak which was reported on August 12. In the absence of evidence to corroborate the tenants' claim that they reported the malfunctioning oven in June, I accept the landlords' evidence that it was reported in August to their plumber. I find that although the tenants were unable to use the oven in the Lower Suite, they suffered no loss as a result because there is no evidence that they ever attempted to use the oven. I therefore find that the tenants have not proven that they have any entitlement to compensation beyond the payment which was accepted on May 16. I therefore dismiss this claim.

Moving expenses: The tenants seek to recover $1,626.95 as the cost of moving expenses and accommodations. They testified that when the inspector told them on September 9 that the wiring was unsafe, they gave the landlord a letter on September 14 advising that they were terminating the lease effective September 14, 2014 and vacating the premises on October 15. The tenants claim they are entitled to the cost of their moving expenses because they had to move due to the unsafe condition of the rental unit. They testified that they believed their lives were in jeopardy as a result of the electrical wiring which the inspector told them was unsafe. The tenants testified that they were forced to stay in a hotel close to the rental unit from October 14 – 16 and in a hotel in a city approximately 400 kilometres from the rental unit from October 16 – 23.

It is clear to me that the tenants did not believe the rental unit was unsafe to occupy as they continued to occupy it for more than a month after they received the safety inspector's report. Further, the report indicates that there is faulty and unsafe wiring,

but does not indicate that the rental unit was unsafe for occupancy. I accept that the landlords failed to have their electrical work completed pursuant to a permit and that the wiring in the property was unsafe. However, I do not accept that the tenants had to vacate the property as a result. I find it more likely that the tenants simply wanted to relocate to the city in which they now live, which is some 400 kilometres from the rental unit and seized upon the safety inspector's findings as an excuse to end their tenancy early. The tenants' own actions show that they did not consider their lives to be in jeopardy. I find that the tenants have not proven that the losses they suffered were as a result of the landlords' breach of the Act or tenancy agreement and I therefore dismiss their claim for moving expenses and hotel costs.

Rent in new unit: The tenants seek to recover the rent they paid in the new rental property to which they moved after vacating the rental unit. There is no legal basis whatsoever under which the landlords would be liable to pay rent for a new unit, particularly since the rent in the new unit is significantly less than what the tenants were paying to the landlords. I dismiss this claim.

Building materials: The tenants seek to recover the cost of materials purchased to perform repairs after the first leak was discovered. I find that the $1,300.00 paid by the landlords on May 16 fully compensated the tenants for both their inconvenience and for the building materials and I find that the tenants have already been completely compensated. I dismiss this claim.

Security deposit: The tenants seek to recover their $1,000.00 security deposit. I find they are entitled to be credited with $1,000.00 for their security deposit and this credit will be applied to awards made to the landlords.

Landlords' claims

Unpaid rent and stop payment fee: The landlords seek to recover $2,600.00 in unpaid rent for the period from September 15 – October 14 as well as a $25.00 fee payable pursuant to term 18 of the addendum to the tenancy agreement as the tenants stopped the payment of their last rent cheque. Although the tenants claimed that they terminated their lease on September 14, they continued to reside in the unit until October 15 and did not surrender possession of the unit to the landlords until that date. I find that the landlords are entitled to rent for that period as well as the $25.00 fee as the tenants agreed to pay that fee when they signed the tenancy agreement. I award the landlords $2,625.00.

Registered mail costs: The landlords seek to recover the cost of sending documents related to this hearing to the tenants via registered mail. Under the legislation, the only

litigation related expense I am empowered to award is the cost of the filing fee. I therefore dismiss this claim.

Lawn repair: The landlords seek to recover $943.75 as the cost of repairing the lawn at the end of the tenancy. The landlords testified that the addendum to the tenancy agreement requires the tenants to "water, fertilize, weed, cut and otherwise maintain the garden or grass area in a reasonable condition including any trees or shrubs therein." The landlords provided photographs taken at the end of the tenancy showing that the garden beds were overgrown and that the lawn had leaves scattered upon it and also provided photographs taken after repairs were completed. The landlords further provided an invoice showing that they paid $943.75 to a lawn and garden service to perform repairs.

The tenants testified that they mowed the lawn once per week and seeded and watered the garden during their tenancy. They theorized that birds had dug up the grass creating the dirt mounds shown in the photographs.

The landlords' photographs show an overgrown garden area, but the lawn looks as though it has been maintained save for a few leaves on it. The landlord's invoice shows charges for $550.00 which includes turf, a turf cutter and lawn and garden soil.

I am satisfied that the tenants breached the terms of their tenancy agreement by failing to leave the gardens in good condition at the end of the tenancy and I find that the lawns had a number of dirt piles upon them which should have been addressed during the tenancy. The tenants were obligated under the terms of the tenancy agreement to perform maintenance regardless of whether they caused damage or it was caused by wildlife.

I find that the landlords had to incur some cost in repairing the gardens and lawns as a result of the tenants' failure to maintain. However, I find that the landlords have not proven that garden soil was required. Gardens typically need soil to be topped up occasionally and I am unable to find that the tenants should be held responsible for this cost. I therefore reduce the charge for materials from $550.00 to $300.00 eliminate my estimate of the cost of garden soil. I have estimated the cost of the soil because the landlords provided no evidence as to the cost of the various materials which were supplied. I also reduce the hours of labour from 15 hours to 14 hours to remove the time involved with spreading soil.

14 hours of labour at a rate of $25.00 per hour amounts to $350.00 and when added to $300.00 for materials, equals $650.00. The landlord would have paid $32.50 for this charge for a total award of $682.50.

Utility bills: The landlords seek to recover $598.80 as the cost of utility charges during the tenancy. The landlords testified that the tenants were required to put the utilities in their own name during the tenancy but did not do so for 3 months, during which time the landlords paid those charges. The tenants testified that they immediately changed the utility accounts to their names but could not explain why the landlord was charged for a period of time in which they presumably paid for utilities.

I find that the landlords have not proven that the tenants failed to pay utilities for 3 months as they did not provide invoices for 3 months. However, I find that the landlords paid utilities for the rental unit for part of the time in which the tenants initially occupied the unit.

The landlords provided copies of 2 statements from Fortis BC and 2 statements from BC Hydro showing what was charged for the following periods. I note that the landlords also submitted a BC Hydro bill with a billing date of April 25, 2014 which stated that there was $157.58 owing. This bill was replaced by an invoice with a billing date of May 9, 2014 which showed that the account had been closed on April 21, 2014, presumably because a new tenancy was in place. I have disregarded the bill dated April 25 as it was replaced by the May 9 invoice.

I also note that the second Fortis BC bill listed in the table below shows a total of $166.29 in charges, but as it includes the first Fortis BC bill as overdue, I have subtracted the amount of the first bill to show the amount charged for that billing period.

Provider	Billing period	Amount charged
Fortis BC	March 21 - April 23	$121.70
Fortis BC	April 24 – May 8	$ 44.59
BC Hydro	February 22 - April 21	$153.23

The first Fortis BC bill charges for March 21 – April 14, a period in which the tenants did not occupy the rental unit. I find that this bill represents 34 days at a rate of $3.58 per day. The tenants are only responsible for 9 of those days and I therefore award the landlord $32.22 which represents 9 days of charges. I find that the tenants are responsible for the entire second Fortis BC bill and I award the landlord $44.59.

The one BC Hydro bill which applies to this period levied charges for a period in which the tenants did not occupy the rental unit. I find that this bill represents 59 days at a rate of $2.60 per day. The tenants are only responsible for 7 of those days and I therefore award the landlord $18.20 which represents 7 days of charges.

The total amount awarded for utilities is $95.01

Painting and cleaning: The landlords seek to recover $2,047.50 as the cost of repairing walls and repainting the rental unit at the end of the tenancy. The parties agreed that the tenants painted several walls in the unit with the landlords' permission and that the walls of the living room were painted dark red and the walls of the bedroom dark green. The landlords testified that they told the tenants they could paint if they returned the walls to their original colour at the end of the tenancy. The tenants claimed that the female landlord told them that she loved the colours they chose, that it matched her furniture and that they did not need to worry about repainting at the end of the tenancy. The landlords denied having said this and noted that they did not live in the rental unit so it would not matter if the colours chosen matched their furniture.

The landlords repainted the unit themselves at the end of the tenancy and supplied a company invoice showing a charge of $1,800.00 for cleaning and painting, $150.00 for paint and cleaning supplies and $97.50 for GST. They testified that because the colours were so dark, they had to use 3-4 coats of neutral colours on the walls which were painted red and 2 coats to cover the green walls. They further testified that because the tenants smoked in the rental unit, they had to wash the walls before painting. They stated that the unit had last been painted approximately 1 year before the tenancy began.

Because the parties agreed that the landlords gave permission for the tenants to paint, I find that the burden lies with the landlords to prove that they also required the tenants to return the rental unit to its original condition at the end of the tenancy. I find that the landlords have not met that burden as the tenants denied that the landlord included this as a proviso to their explicit permission. However, I find that cleaning of the walls was required due to the tenants' smoking, which they did not deny, and I find that an award of $60.00 will adequately compensate the landlords for this labour. I award the landlords $60.00 and dismiss the remainder of the claim.

Oven replacement: The landlords seek to recover $531.00 as the cost of replacing the oven in the Lower Unit at the end of the tenancy. The parties agreed that the oven was damaged by the water which leaked from the upper floor and shorted out the oven. They argued that the tenants should have informed them of the leak earlier or prevented the leak from affecting the oven.

In order for the landlords to succeed in this claim, they must prove that the tenants were negligent in either causing the leak that affected the oven or negligent in not reporting the ongoing problem in a timely manner. I find that the landlords have not met this burden. The landlords have insufficient evidence to show that the tenants were

negligent in causing the leak and while the tenants may not have reported the problem with the oven right away, I find that they reported each of the leaks immediately upon discovery. I find it more likely than not that the oven was irreparably damaged soon after the leaks began and the delay in reporting that the oven was not functioning did not exacerbate the problem. I therefore dismiss this claim.

Filing fee: The landlords seek to recover the $50.00 filing fee paid to bring their application. As the landlords have been just partially successful in their claim, I find they should recover one half of the filing fee and I award them $25.00.

In summary, the tenants' claim has been dismissed in its entirety. The landlords have been successful as follows:

Unpaid rent and stop payment fee	$2,650.00
Lawn repair	$ 682.50
Utility bills	$ 95.01
Painting and cleaning	$ 60.00
Filing fee	$ 25.00
Total:	**$3,512.51**

The landlords have been awarded a total of $3,512.51. I order the landlords to retain the $1,000.00 security deposit in partial satisfaction of the claim and I grant them a monetary order for the balance of $2,512.51. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' claim is dismissed. The landlords will retain the security deposit and are granted a monetary order for $2,512.51.

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: April 20, 2015

Residential Tenancy Branch