



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord and the named tenants called in and participated in the hearing. The tenants acknowledged that they have received the landlord's evidence. The tenants did not submit any documentary evidence in reply to the landlord's claims in this proceeding.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenants' security deposit?

Background and Evidence

The rental unit is a modular home located on a large rural property near Nanaimo. The tenancy began on June 1, 2012. The three named tenants signed the tenancy agreement on or about May 27, 2012. The tenancy agreement provided that the tenancy was for a fixed term of five years commencing on June 1, 2012 and continuing until May 30, 2017. The monthly rent was \$1,300.00, payable on the first of each month. The tenancy agreement referred to a security deposit of \$675.00, but the landlord said that the tenants paid a deposit of \$650.00 at the start of the tenancy and did not pay a pet deposit. The tenancy agreement provided that utilities were not included in the rent.

The landlord testified that the tenants failed to pay utility bills sent to them for water use and for garbage collection. The landlord also said that the tenants had pets that were not disclosed when the tenancy started. On September 12, 2012 he sent the tenants a 10 day Notice to End Tenancy for unpaid rent by registered mail. The Notice to End Tenancy referred to a pet deposit amount of \$750.00 claimed as rent and an unpaid amount of \$170.22 for utilities. The landlord testified that he tried on many occasions to

contact the tenants by phone to find out their intentions, but they would not answer calls. The landlord had someone visit the rental property on his behalf on October 9, 2012. The landlord learned that the tenants had abandoned the property, leaving the doors open and the keys inside the house. The landlord said that he immediately advertised the house for rent. Despite extensive efforts he said that he was unable to re-rent the property until April 1, 2013. The landlord said that the rental property was left in terrible shape and the tenants also took his farm tractor that was on the property. The landlord testified that he reported the missing tractor to the RCMP. The landlord said that an RCMP officer contacted the tenants in October, 2012 after he reported the missing tractor. The landlord testified that he was told by the RCMP that the tractor was a civil matter. He also said that the RCMP would not disclose the whereabouts of the tenants and it was not until September, 2014 that the landlord was able to locate the tenants. He then filed the application for dispute resolution and served it upon the tenants.

The landlord has made the following monetary claims in his application:

• Utilities with receipts:	\$1,200.25
• Removing garbage, cleaning:	\$2,213.62
• Cleaning and damage repairs:	\$581.50
• Rent loss:	\$7,800.00
• Expenses incurred to re-rent the place:	\$556.35
• Not returning back the farm tractor:	\$12,500.00

Total:	\$24,851.72
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The landlord submitted digital photographs of the rental property taken after the tenants abandoned the property as well as pictures that were taken before the tenancy commenced. The landlord also included pictures of the farm tractor that he claimed was removed by the tenants.

The landlord provided documents, including advertisements, note and call records relating to his efforts to find a new tenant for the rental property.

The tenants disputed all of the landlord's claims. The tenants testified that they received a 10 day Notice to End Tenancy dated September 11, 2012. The Notice to End Tenancy required them to move out by September 25, 2012 and they moved out pursuant to that Notice. The tenant, K.D.K. testified that he moved out of the rental unit long before September, 2012 because he obtained employment out of the province. He testified that he was not living at the rental unit when the other tenants left in September, 2012. The tenant K.D. K. did not notify the landlord that he was moving and

he did not ask to be removed from the tenancy agreement. K.D.K. and the other tenants are family members.

The tenants testified that they did not take the landlord's tractor and said that they have no knowledge of its whereabouts. The tenants said they were contacted by the RCMP who asked them about the tractor and about an antique plow, also said to be missing. The tenants told the RCMP that they did not take the tractor and they have not heard from the RCMP since then.

The tenants denied that they damaged the rental unit. They said that it was reasonably clean and in good order when they moved out. The tenants also claimed that the yard was in the same condition as depicted in the landlord's photos when the tenancy began.

Analysis

Dealing first with the landlord's claim with respect to the missing tractor, I find that the landlord has not proved, on a balance of probabilities that the tenants, or any of them, took the tractor or were involved in its disappearance. Further, I am not satisfied that the claim with respect to the tractor is a matter that falls within my jurisdiction under the *Residential Tenancy Act* because it relates to an alleged theft of property unrelated to the tenancy agreement or to the rental property itself. This portion of the landlord's claim is denied.

The landlord claimed the sum of \$2,213.62 for cleaning and garbage removal. He provided an invoice from a clean-up service dated October 31, 2012. The invoice listed labour for yard cleanup on two successive days, including: "collecting and disposal of different types of waste, metal, old appliances, car parts, logs, old construction materials, etc" as well as: "labour for inside cleanup of floors, walls, bath tubs, sinks, windows, deck, removal of furniture and tools left behind". The invoice also included amounts expended for replacement of items including locks and smoke detectors and some repairs and painting.

The landlord claimed a further amount of \$581.50 for cleaning and damage repairs. The landlord submitted a cheque receipt for \$180.00 paid to Mr. S.A. The notation on the cheque receipt stated that the payment was: "Part of fees for property work". The landlord said that a bank deposit statement for the sum of \$401.50 was also a payment for cleaning and damage repairs.

I accept the landlord's testimony that the tenant left the rental property in a state of disorder; with abandoned goods strewn about the property and I accept that the interior of the rental unit was also dirty, unkempt and strewn with abandoned goods. I do not accept the tenants' testimony that the property was in good order; the tenants left

without giving notice and without providing any forwarding address. They provided no photos or other documents to support their version of events and their evidence as to the move out condition of the property is simply not credible. I find that the rental property was in a neat and tidy state at the commencement of the tenancy, as depicted in the landlord's photos. I accept the landlord's evidence that extensive work was required to put the property back into rentable condition. I allow the claim for \$2,213.62, being the invoice amount dated October 31, 2012. I allow the further amount of \$180.00 paid to Mr. S. A. for cleanup work. I do not allow the landlord's claim for \$401.50. The only document relating to the claim is a photocopy of a credit union deposit slip apparently dated December 18, 2012 for a cash deposit of \$420.00. There is nothing on the document to connect the deposit to a named person or to say who made the deposit. In the absence of any documentary evidence linking the deposit slip to an invoice or receipt for work to the rental property, I deny the landlord's claim for reimbursement of this amount. The landlord's claim for cleaning and repairs is allowed in the amount of \$2,393.62.

The landlord has claimed \$7,800.00 for loss of rental income. This claim consists of rent in the amount of \$1,300.00 per month for the six month period from October, 2012 to and including March, 2013. The landlord submitted documents and personal records detailing the advertising and his efforts to secure new tenants for the rental property commencing immediately after the landlord discovered that the rental unit had been abandoned by the tenants. I find that the landlord took reasonable steps to re-rent the property as soon as he became aware that it was vacant and that he pursued those efforts diligently until he secured new tenants commencing April, 2013. The tenants signed a tenancy agreement for a five year fixed term and they were thereby obliged to pay rent for the term of the agreement. When the tenants left without giving notice, the landlord was responsible for taking all reasonable efforts to mitigate his loss by seeking out new tenants and advertising the rental unit. I find that he did make reasonable efforts, but despite those efforts, he was unable to re-rent the unit until April, 2013. I therefore allow the landlord's claim for loss of rental income in the amount claimed. The landlord also claimed for his expenses incurred to re-rent the unit in the amount of \$556.35. The expenses that he claimed included such things as travel costs and ferry fares to travel from his home to the rental property. The landlord's expenses to re-rent the unit are not recoverable amounts, but rather are part of the costs of doing business and may not be claimed in addition to the claim for loss of rental income. This portion of the landlord's claim is denied.

The landlord claimed the sum of \$1,200.25 for utilities. The landlord did not itemize this claim; it included the sum of \$170.22 that was claimed as unpaid utilities by the landlord's 10 day Notice to End Tenancy given on September 11, 2012. The landlord submitted copies of BC Hydro invoices, including an invoice given April 16, 2013 as well as a several municipal invoices, including one dated May 25, 2013. There were other

invoices provided, but no attempt was made to provide an accounting or calculation to show how the landlord arrived at the amount claimed in his application. The landlord bears the burden of proving each of his claims, on a balance of probabilities. At the hearing the landlord said that his claim for utilities includes amounts paid for utilities during the tenancy and during the period the unit was vacant. It is not my role to perform accounting duties in order to calculate on the landlord's behalf what portions of various bills submitted should legitimately be charged to the tenants. I find that the landlord is entitled to recover outstanding utilities in the amount of \$170.25, but I find that he has failed to provide proper evidence to establish with particularity the additional amounts for utilities that the landlord may be entitled to claim. The landlord's claim for utilities over and above the sum of \$170.25 is dismissed without leave to reapply.

Conclusion

I have awarded the following amounts to the landlord:

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|-------------------------------------------|------------|
| • Cleaning and repairs: | \$2,393.62 |
| • Loss of rental income October to March: | \$7,800.00 |
| • Unpaid utilities: | \$170.22 |

Total:	\$10,363.84
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The landlord is entitled to recover the \$100.00 filing fee for his application, for a total award of \$10,463.84. I order that the landlord retain the \$650.00 security deposit in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$9,813.84. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: May 4, 2015

Residential Tenancy Branch

