



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNSD, MNDC, FF
Tenants' application: MNDC, MNSD, FF, O

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing. The landlord and the tenants were served with each other's applications and they have exchanged documentary and digital evidence prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for cleaning and repairs and if so, in what amount?

Is the landlord entitled to retain all or some portion of the tenants' pets and security deposits?

Are the tenants entitled to the return of the security and pet deposits?

Are the tenants entitled to compensation for damaged goods and for compensation for their alleged improper eviction, or for mental stress?

Background and Evidence

The rental unit is a manufactured home on rural property on Vancouver Island. The tenancy began on February 15, 2014. The monthly rent was \$1,150.00 and the tenants paid a security deposit of \$575.00 and a pet deposit of \$575.00 on February 10, 2014.

There was an earlier dispute resolution proceeding with respect to this tenancy. After conducting a hearing on August 27, 2014 an arbitrator issued an August 28th decision wherein she granted the landlord an early end to the tenancy and an order for

possession effective two days after service on the tenant. She also awarded the landlord her \$50.00 filing fee, to be retained from the tenants' security deposit. After the August 28th decision was pronounced the landlord received the tenants' payment of rent for September in the amount of \$1,150.00.

The tenants said that the landlord evicted them from the rental unit despite the payment of rent and without first obtaining a writ of possession or employing the services of a bailiff.

In the landlord's application for dispute resolution she initially claimed payment of a monetary award of \$679.00 "(plus)". In her later submission, received by the Residential Tenancy Branch on April 29, 2015 she claimed payment of the following amounts:

• Filing fee from a previous application:	\$50.00
• Filing fee for her current application:	\$50.00
• Canada Post charge for mailbox locks and keys:	\$30.45
• Grass seed to replace lawn destroyed by tenant's dog:	\$190.34
• Pesticide to treat fleas in rental unit:	\$33.59
• Flea pesticide and deodorizer	\$144.97
• Replacement locks:	\$103.00
• Stove replacement – stove missing:	\$445.88
• Pest control flea extermination:	\$472.50
• Rubbish removal landfill charge:	\$8.00
• Rubbish removal landfill charge:	\$8.00
• Replacement picnic table:	\$413.28

She claimed a further \$630.00, said to be for 42 hours of cleanup at \$15 per hour, for a total monetary request of \$2,590.09. In a further submission received by the Residential Tenancy Branch on May 7, 2015 and dated May 1, 2015. The landlord sought to add to her monetary claim. She submitted a receipt in the amount of \$1,169.00 in the name of a contracting company for nine hours of back-hoe work and 12 yards of gravel. The receipt was dated September 26, 2014.

The landlord said that the tenants left the rental property in extremely poor condition. She said that the tenants' dog caused extensive damage; there were dog feces and urine scattered over the grounds. The house was infested with fleas. The tenants took the kitchen stove and the landlord had to replace it. The landlord said that the tenant's dog chewed the picnic table and the tenant made an inadequate repair by replacing several boards with a dissimilar type of lumber. The landlord said that the tenants' dog

caused extensive damage to the property and in addition to her cleanup she had to hire a contractor to repair the property.

The landlord claimed payment for flea treatments performed in October. She said the new occupants complained about the fleas and they were a pre-existing condition caused by the tenants. The landlord claimed payment of the sum of \$1,169.00 pursuant to an invoice from a contractor for back-hoe work to remove and bury contaminated soil and to supply and spread gravel. The landlord submitted photographs on a flash drive, they included pictures of the rental property taken some time before the tenancy began, photos taken during the tenancy and pictures taken in September, 2014 after the tenancy ended. The landlord said the photos showed the damage caused by the tenants and particularly the mess caused by the dog and the tenants' failure to clean up after it.

The tenants dispute substantially all of the landlord's claims. The tenants testified that they were improperly evicted by the landlord. The tenants testified that they paid the landlord rent for the month of September and the landlord accepted the payment, but then served the order for possession obtained at the previous hearing. The tenants said that they had not moved out of the rental property and still had some possessions there as well as cleaning and yard work to perform when the landlord changed the locks and put the tenants' remaining belongings in the street. The tenant said that a 32" television and some lamps were left outside in the rain by the landlord.

With respect to the landlord's claims, the tenants testified that during the tenancy they bought their own stove and the landlord removed the original stove to another manufactured home owned by her. At the hearing the landlord did not dispute the tenant's testimony about the stove removal.

The tenant referred to the landlord's claim for the replacement picnic table. He referred to pictures of the table submitted by the tenants. He said that table was 10 years old and heavily used and weathered. He referred to the repairs that he made to replace boards chewed by his dog. The tenant said the repairs were adequate and in keeping with the age of the table. He said the table purchased by the landlord as a replacement was not at all comparable to the existing table.

The tenant said that his dog had made a couple of holes in the yard and there was some clean up required. The tenant said that he was prevented from doing more clean up because of the landlord's actions in changing the locks and denying the tenants access to the rental property before they were fully moved out. The tenant said that the landlord's claim for payment of an invoice for a back-hoe contractor and for gravel was

completely unreasonable. The tenant said that the back-hoe operator who provided the receipt is the landlord's boyfriend and the back-hoe used was in fact stored on the rental property and is visible in the tenant's photographs of the rental property taken during the tenancy.

The tenants said that they did an excellent job of cleaning the rental unit and testified that this can be clearly observed in a video taken during the landlord's walkthrough of the rental unit on September 15th. The tenants testified that the landlord had new tenants move into the rental unit before the end of September.

In the tenants' application for dispute resolution filed April 27, 2015, they claimed for a refund of rent paid for September, for the return of their security and pet deposits and for compensation for the television and lamps left outside in the rain by the landlord. They claimed additional amounts for stress and loss of work.

Analysis

Dealing first with the landlord's claim, I deny the landlord's claim for a replacement stove. I accept the tenant's evidence that the landlord removed her own stove and the tenants supplied and used their own stove during the tenancy and took it with them when they left. The landlord claimed payment for a replacement picnic table in the amount of \$413.28. I deny this claim as well. The original picnic table may be seen in the photographs supplied by the tenants and by the landlord; the picnic table is very old and weathered and many of the boards are split and cracked. I accept that the tenants' dog chewed the ends of some boards. The tenant replaced those boards with dissimilar wood that obviously does not match the existing wood, which is old and weathered. I find that the repairs made by the tenant were serviceable and allowed the table to continue to be used for its intended purpose. Because, based on the photographs, the original table was near the end of its useful life, but still functional after repairs, I deny the landlord's claim for the cost to replace it.

The landlord claimed for the cost to replace locks. I do not allow this claim. The landlord engaged in an unauthorized self-help remedy to evict the tenants on September 16th. The invoice she submitted shows that she purchased the new locks on September 16th and it is not the case that the tenants failed to surrender the keys as claimed by the landlord. The tenants were put out of possession by the landlord and did not have an opportunity to surrender the keys before the locks were changed. The landlord claimed several amounts for flea treatments in the rental unit. She said that the fleas were brought to the rental unit by the tenants' dogs. The landlord submitted an invoice from a pest control company. The invoice was dated October 7,

2014. On the invoice the technician wrote that: "fleas very definitely a pre-existing condition prior to the current tenants." The tenants denied that they were responsible for the flea problem and they noted that the service was provided after new tenants had moved in and were occupying the rental unit. I find that it is probable that the tenants' dogs were the source of the flea infestation in the rental unit and that it became apparent after the tenants and their dogs moved out. I allow the landlord's claim for the cost of flea treatment paid to the pest control company, but I do not allow the landlord's claims for supplies for her earlier, ineffectual attempts to treat the problem herself. The claim for flea treatments in the amount of \$472.50 is allowed.

I find that the tenants did leave the outdoor area of the property in poor condition. There was damage caused by the tenants' dog and cleanup was required. I find, however, that the landlord's claims for cleanup are excessive and inflated. The landlord said that she spent some 42 hours on cleanup work. Her estimate included claims with respect to matters that have been disallowed, such as a claim for time spent buying and replacing locks, time spent to purchase a new stove and time to purchase a picnic table. Based on the photographic evidence supplied I allow the landlord's claims for time spent performing cleanup work in the amount of \$225.00, being 15 hours of work at \$15.00 per hour. The landlord claimed \$190.34 for grass seed to replace the area of lawn destroyed by the tenants' dog. I find the amount claimed to be inordinate. The invoice was for a large quantity of seed and also included a charge for other building supplies. I allow the claim for grass seed in the amount of \$65.00 only. I have limited the landlord's claim to the amount stated because she effectively prevented the tenants from performing additional work and yard cleanup by preventing their access to the rental property after September 15, 2014. I do not allow the landlord's claim for payment of the receipt for back-hoe charges and gravel. The landlord did not mention this invoice and did not submit it as part of her claim until May, 2015. I accept the tenant's testimony that the contractor who performed the work is the landlord's boyfriend and the equipment used was actually stored on the rental property. I consider the work done, including the supply and levelling of gravel to the property to be in the nature of an improvement, not remedial work and in any event the receipt was submitted late and this claim is dismissed without leave to reapply.

The total amounts awarded to the landlord are as follows:

- Flea treatments: \$472.50
- Labour to perform cleanup work: \$225.00
- Grass seed: \$65.00

Total: \$762.50

The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$812.50.

Turning to the tenants' claim, in their application they claimed the following:

- \$1,150.00 rent for September
- \$575.00 pet deposit
- \$575.00 security deposit
- \$200.00 filing fees
- \$50.00 USB drive (to supply evidence)
- \$450.00 RCA 32 inch TV left in rain
- \$300.00 two lamps left in rain
- \$500.00 for interest
- \$1,200.00 for emotional stress loss of work. Children scared, emotional damage.

Total: \$5,000.00

On August 28, 2014 the landlord was granted an order for possession. She accepted payment of rent for the month of September after the order was granted and she evicted the tenants in mid-September without following the required statutory procedures. I find that the tenants are entitled to the refund of half the rent paid for September in the amount of \$575.00. The tenants are not entitled to recover filing fees for past applications and they may not recover costs expended to supply evidence for the hearing. These claims, including the claim for a USB drive are denied. There is no basis for the amount of \$500.00 for interest and this claim is denied. I accept the tenants' testimony that the TV was in working order before it was left in the rain and that it was not working afterwards. In the absence of evidence with respect to the replacement cost for the TV, I allow the tenant's claim for the loss of the TV in the amount of \$400.00. Based on the photographs and video evidence provided by the tenants, I do not allow the claims for the two lamps, because it is not clear that they were damaged and there is no evidence as to their value.

It is apparent that the relationship between the tenants and the landlord became hostile and confrontational before the tenancy ended, but the tenants have not provided sufficient evidence to justify an award for mental stress or anguish or some form of award by way of aggravated damages. There is no documentary evidence with respect to a loss of income. The tenants' claim for damages for emotional stress and other

intangible losses is dismissed without leave to reapply. The tenants have been partially successful in their application and they are entitled to recover the \$50.00 filing for their application.

I have awarded the landlord the sum of \$812.50, inclusive of the filing fee. In the dispute resolution decision dated August 28, 2014, the landlord was awarded the \$50.00 filing fee for her application and ordered to retain it from the security deposit that she holds. After deduction of that amount there remains a combined security and pet deposit of \$1,100.00. I order that the landlord retain the sum of \$812.50 from the deposits, leaving a balance of \$287.50 to be refunded to the tenants.

Conclusion

The landlord has been awarded the sum of \$812.50 to be retained from the deposits totalling \$1,100.00. The tenants have been awarded the sum of \$1,025.00; that amount plus the remainder of the deposits due to the tenants is the sum of \$1,312.50 and I grant the tenants an order under section 67 in the said amount. 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: June 08, 2015

Residential Tenancy Branch

