



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnsd, rpp, mnd, mnsd, mnr, ff

Introduction:

The tenants apply for recovery of their security deposit from the landlords. They also seek an order for the recovery of personal property held by the landlords, or alternatively for a monetary order for the value of those items.

The landlords apply for a monetary award for loss of rental income for May, for unpaid utilities, and for various costs for repairs or clean up following the ending of this tenancy. The landlords also seek an order to retain the tenants' security deposit in partial satisfaction of the monetary award.

Issues to be decided:

Is it appropriate to order that the landlord return the tenants' possessions?

Are the tenants entitled to a monetary order?

Are the landlords entitled to a monetary order?

Should the tenants' security deposit be returned to the tenants, or retained by the landlord?

Background and Evidence:

This tenancy began December 1, 2013. Monthly rent was \$2,400.00 per month, due on the first day of each month. A security deposit of \$1,200.00 was paid, which the landlords have retained. The tenants have not provided the landlords with their forwarding address.

In April, 2015, the rent was paid to the landlords, but the tenants received no receipt. The tenants then refused to pay their utilities, because the landlords would not provide a receipt at the time payment was made. On April 22, 2015, the tenants were issued a One Month Notice to End Tenancy effective to end the tenancy May 31, 2015. May's rent was not paid as due on May 1, and on May 2 the tenants were issued a 10 Day Notice to End Tenancy, for failure to pay May's rent. This notice was effective to end the tenancy May 12, 2015. The tenants paid no further rent, and decided to move out.

Accordingly to the tenants, by May 5 most of their items were moved out. However, when they went to the property on May 5, they could not enter the premises as the locks had been changed. This prevented them from doing their final clean up, or removing the balance of their possessions, which included a vacuum, a bike, some clothing, a drum kit, and some kitchen items. The tenants estimate the value of these items to be \$630.00.

Accordingly to the male landlord, the tenants were observed moving their items out in early May. On May 5, he posted a notice for a final condition inspection to occur May 9. No one was

at the premises on that date, and a second notice was then posted for an inspection to occur May 13. The male landlord saw the male tenant who attended this hearing, at the premises on May 11. The tenant took all remaining possessions of the tenant, and left doors and windows open when he left. The tenants never returned to do a Move-out condition inspection, so the landlords changed the locks on May 15, or perhaps May 17.

The landlords submit that they lost rent for May, were never paid the final utility payments, and that there was considerable clean up and repairs required. The lawns were not cut, and there was garbage everywhere. A plumbing bill from early in the tenancy was never paid. The walls required repair and painting. A bedroom wardrobe had been removed, which was found damaged and outside under the deck. The main entrance door frame was damaged, the hardwood floors were damaged, and the lino in the kitchen was damaged.

The tenants respond that the landlords' photo of the damaged door shows a new lock in the door, and that the photo is date stamped May 5, 2015, confirming the change of locks by the landlord had occurred before the photo was taken. The tenants testified they were in Texas for a music festival May 6 to 12, and could not have been present at the premises on May 11 as the landlords say. The lawns were not cut because the landlord never provided the tenants with a lawn mover. The plumbing problems pre-existed the tenancy, as was verbally confirmed by the landlord at the start of the tenancy. The Condition inspection report from the start of the tenancy indicates the hardwood floors were already scratched. The wardrobe, or dresser, fell apart when the tenants tried to move it.

Analysis:

The majority of the tenants' testimony was provided by the male tenant. For the most part, I found the tenant's testimony to be credible, and I note at times he gave testimony against interest. For example, he acknowledged that the utilities were withheld, and that May's rent was never paid. He also acknowledged that the tenants forwarding address had never been given to the landlord. In particular, I accept the tenant's testimony (which is supported by the landlord's photo of the damaged door) that the locks to the premises had been changed by May 5, and that the tenants were unable to re-enter the premises thereafter. My determination that the locks were changed on May 5 is also supported by a contradiction in the landlords' evidence. In their written materials, the landlords stated the tenants had abandoned the premises by May 2, whereas in testimony the male landlord said he saw tenants in the premises as late as May 11.

The majority of the landlord's testimony was provided by the male landlord. In some regards (and where specified and explained below) I preferred the male landlord's testimony over that of the tenants.

The various claims are determined as follows:

1. Tenant's possessions: I accept that the tenants left items in the premises, which they were unable to recover after the landlord changed the locks to the premises. If indeed the landlord felt the premises had been abandoned by the tenants, then the landlord failed to preserve the tenants' goods as required in the abandonment protocol set out in part 5 of the Residential Tenancy Regulation. I therefore find the landlords liable to compensate the tenants for their lost goods. I accept the landlord's testimony that he does not have these possessions, and given his testimony that he threw out all garbage left behind by the tenants, I assume he considered these items to be garbage. Although

no receipts were provided, I find the tenants' claimed value for these possessions to be reasonable, and the tenants are awarded the sum of \$630.00 for the value of these lost goods.

2. Security deposit: As the landlords have no obligation to return the security deposit until after the tenants' forward address is received (see section 38, Residential Tenancy Act) I have no authority order that the deposit be returned to the tenants. That portion of the tenants' claim is dismissed.
3. May rent: The landlord's One Month Notice was effective to end the tenancy on May 31, 2015, and then the tenants failed to pay their rent for May, precipitating the given of the 10 Day Notice. Ordinarily in these circumstances the landlord would be entitled to compensation for the loss of rent for the entire month, (subject to any proven failure by the landlords to take reasonable steps to mitigate that loss). In this case however, the tenants should have had occupancy until May 12, but were denied occupancy for 7 days as a result of the premature changing of the locks by the landlords on May 5. I find that the landlords had no opportunity to rent the premises to a different tenant for any part of May, in particular because repairs were required to be made as a result of the condition the premises were left by the tenants. Even if the locks had not been changed, and the tenancy had continued for another week, I am not persuaded by any evidence or testimony that the tenants had any intention of fully cleaning the premises, or making or arranging for repairs to damage they caused. There was no evidence for example, that they had retained any repairers to attend the premises prior to the May 12th end of tenancy date. Further, the tenants who attended the hearing testified they were away in Texas from May 6 to May 12, and clearly they could not have made repairs or cleaned while away. Accordingly, the landlords are awarded loss of rent for May, subject to a reduction for the 7 day period from May 5 to May 12 when occupancy was denied to the tenants. The tenants are therefore found liable for the landlord's loss of rent for 24 days of May, which amounts to \$1,858.06.
4. Utilities: I accept that the tenant's final utility bills were not paid. As confirmed by the landlords' bills, these bills amount to \$210.16 (Fortis BC) and \$266.83 (BC Hydro), for a total of \$476.99, a sum for which the tenants are liable.
5. Plumbing: I prefer the tenant's testimony over the landlords' that there was a pre-existing plumbing problem in the premises. The tenants complained of this problem within two weeks of the start of their tenancy, and I find they are not liable for the landlords' plumbing repair bill. However, I accept that the toilet was not functioning properly at the end of the tenancy, but no complaint of same was ever made by the tenants, and there is no indication in the Move-in Report of a problem with a running toilet. The tenants are found liable for the toilet repair, of \$10.82.
6. Clean-up and garbage: The landlords' photographs graphically confirm that the premises were left in a very unclean condition. The appliances were not cleaned, and the oven in particular was filthy and would have required many hours of extensive cleaning. The yard was not maintained, and I accept it would have taken many hours to restore the large yard to a proper condition. The tenants knew or should have known that the cutting of the lawn was their responsibility under the tenancy agreement, and it was never the landlord's responsibility to provide them with a lawn mower. Nevertheless, I find the landlord's claim of \$600.00 excessive, and his estimate of 70 hours of work to be

excessive. I do accept that he did this work, but award the more reasonable and justifiable sum of \$400.00, based upon an estimated 20 hours of work at an hourly rate of \$20.00.

7. Repair to walls and painting: The landlords' photographs confirm that the walls and premises required some repair and painting following the tenancy, and I note that the Move-in Report describes the walls as being in good condition when the tenancy began. A landlord must expect however, some amount of wear and tear to walls as a result of ordinary occupation, and it is not unusual that walls would require repairing every 4 years (or 48 months) or so as a result. The \$300.00 sum claimed by the landlords must therefore be reduced by 18/48 to account for the 18 month tenancy, and I award the pro-rated sum of \$187.50 to the landlords.
8. Damaged wardrobe: I prefer the landlords' testimony over that of the tenants with respect to the wardrobe. I accept that it had been in good condition when the tenancy began, and that it was found damaged under the deck at the end of the tenancy. The tenants must be held liable for any deterioration or damage to the wardrobe during the course of their tenancy. I accept that the landlord's purchased the wardrobe at a cost of \$200.00, and the landlords are awarded this sum.
9. Door frame: The male tenant acknowledged he caused damage to the door frame during the course of the tenancy, but notes that no receipts support the landlords' claim that the repair is valued at \$100.00. I note that the landlords chose to replace the locks at the end of the tenancy, and the tenant is not liable for this portion of the repair. I also note that the door frame repair was commenced by the male landlord, and in the absence of any actual invoices for any parts or materials, I will award an estimated 2 hours of labour, at a rate of \$25.00, for a total of \$50.00.
10. Hardwood floors: As noted by the tenants, the Move-in Report indicates the hardwood floors were scratched prior to the start of the tenancy. I have no ability to discern how much the condition of the floors were worsened during the tenancy (if at all), or what portion of this worsening is attributable to wear and tear as opposed to damage caused by the tenants. The landlords have failed to prove that the tenants are liable for the cost of repair to the hardwood floors.
11. Lino floors: I accept that the lino flooring was in good condition at the start of the tenancy, as confirmed by the Move-In Report. I accept that the lino flooring was left in a burned and damaged condition by the tenants, and that the sum of \$200.00 to repair the flooring as claimed by the landlords, is reasonable. This sum is awarded to the landlords.
12. Filing fees: The awarding of recovery of filing fees is an issue completely within my discretion. I decline to award recovery of the tenants' filing fee, as the bulk of the tenants' claim was regarding the security deposit which claim was dismissed. I also decline to award recovery of the landlords' filing fee, due to the improper changing of the locks by the male landlord at the ending of this tenancy.

In my decision, the tenants are awarded \$630.00, while the landlords are awarded \$3,383.37. Setting off one award from the other leaves a sum of \$2,753.37 owing by the tenants to the landlords. Given that the tenants' claim to recover the deposit is dismissed, it follows that the

deposit held by the landlords should be retained by the landlords and applied as against the balance owed by the tenants. The deposit totals \$1,200.00, which results in a final sum of \$1,553.37 owed by the tenants to the landlords. The tenants must pay this sum to the landlords immediately.

Conclusion:

The landlords may retain the \$1,200.00 security deposit. The tenants must pay the further sum of \$1,553.37 to the landlords immediately.

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: July 06, 2015

Residential Tenancy Branch

