



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords' application: MNR, MNSD, FF
Tenant's Application: MNDC, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant.

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 all or part of the security deposit?

Is the tenant entitled to a monetary award and if so, in what amount?

Is the tenant entitled to the return of his security deposit including double the amount?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Langley. The tenancy began in January, 2014 when the former owner of the rental property rented the basement suite to the tenants. The former landlord created a tenancy agreement for a term said to commence on April 1, 2014 with monthly rent of \$800.00 payable on the first of each month. The rental agreement provided that the tenancy included storage. The tenancy agreement stated that a security deposit of \$400.00 was paid on April 1, 2014. The agreement was signed by the landlord on April 30, 2014 and by the tenant on May 5, 2014.

The landlord purchased the rental property and took possession on or about July 16, 2014.

The landlord testified that the tenant failed to pay rent for November, 2014. The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent dated November 2, 2014. The landlord said that the tenant moved out of the rental unit on December 1, 2014. In his application filed on December 15, 2014, the landlord claimed for unpaid rent, and cleaning costs.

The tenant testified that he gave the landlord a notice to end tenancy dated October 30, 2014 stating that the tenants would move out of the rental unit by November 30, 2014. The tenant

also said in his notice letter that he expected the landlord to return his damage deposit in full, in cash on November 30th plus an extra \$110 owing from the landlord.

In the tenant's application filed on December 23, 2014, he claimed payment of the sum of \$6,120.00. The tenant said that after the landlord purchased the rental property and moved into the upstairs portion of the house with family, including young children, his rights as a tenant were disrespected and his rights to use and quiet enjoyment of the rent unit were denied. He complained that he was seriously disturbed by the noise of the landlord's children jumping and running throughout the house and crying outside his door on a daily basis. The tenant said the landlord regularly entered his suite without notice to fix lights and repair the bathroom fan. The tenant complained that the landlord used part of the rental space for his own storage area and workshop. He said that the landlord damaged his personal property. He claimed that a piece of gold extraction equipment was damaged beyond repair by dust created by the landlord's use of a tile cutting saw. The tenant claimed that another item, a header box, constructed of plastic was broken by the landlord. He claimed that the landlord wrecked an air conditioning unit by moving it to an exposed area where it was irreparably damaged by the weather. He said he had set the unit up to test it and confirmed that it worked. The tenant arranged to sell the unit for \$300.00, but was unable to do so after it was left outside. The tenant claimed that the landlord "broke and entered" the rental unit on multiple occasions and repeatedly entered the unit without giving proper notice. The tenant objected to the written notices that the landlord gave to him regarding entries to the rental unit. The tenant testified that under the tenancy agreement he was given specific storage space and the landlord took away his storage space for his own uses after he purchased the property and moved in upstairs. The tenant complained that the landlord and his children continuously entered his "rental yard" without notifying him or asking permission.

The tenant testified that the landlord brought a new form of tenancy agreement and wanted him to sign it. The agreement sought to raise the rent by \$25.00 for use of laundry and it tried to limit the storage area for the tenants' use. The tenant alleged that he was entitled to use the entire storage area. The tenant also complained that the landlord's wife refused to provide him with a mailbox key.

The tenant claimed that the landlord was responsible for a loss of income because he damaged the tenant's equipment. The tenant advanced the following monetary claims against the landlord:

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| • Finishing sluicer: | \$240.00 |
| • Header box: | \$100.00 |
| • Air conditioner: | \$300.00 |
| • Cost of delay to income: | \$400.00 |
| • Moving cost: | \$920.00 |
| • Filing fees and expenses: | \$160.00 |

• Loss of rights peace & privacy (Breaking and entering)	
4 months X \$800.00 per month	\$3,200.00
• Damage deposit (was not paid or disputed within 15 days of vacancy)	\$800.00
Total:	\$6,120.00

The tenant said that he gave the landlord his forwarding address in writing on December 2, 2014.

The landlord testified that the former owner provided him with the details of the tenancy agreement before he moved into the rental property with his family. The landlord said that he told the tenant that he had children and the landlord's quiet hours in the house would be from 10:00 P.M. to 8:00 A.M. The landlord looked at the basement area occupied by the tenant's belongings. He asked the tenant to clear a passage way to the basement access door. The landlord requested that the tenant clean up an area so the landlord could use a portion of the basement for his personal storage. The tenant did not respond to his request. The landlord repeated his request in August and September without any action by the tenant. The landlord said that the tenant told him on September 29th that he would not be able to pay rent for October on time. The landlord served a 10 day Notice to End Tenancy on October 9th.

On October 29th the landlord brought some belongings to place in the basement. He said that access to the basement door was completely blocked by a large air conditioner, plugged into an outside socket and running. It was not plumbed or set up to cool any part of the rental unit. The tenant was not present. The landlord said that in order to obtain access to the basement he had to move it. He moved it to an area out from under the deck. He left a note for the tenant to keep the path clear.

The landlord disputed the tenant's claims about disturbances. He said that on one occasion in August his daughter was confused about her father's whereabouts and was crying outside the tenant's door. The landlord said this was a singular occurrence and has never been repeated, contrary to the tenant's testimony. The landlord said that he has never entered the tenant's suite without permission. The landlord said that he was advised by the former landlord about the storage area allotted to the tenant. This was by way of a verbal agreement and the written tenancy agreement did not assign a specific storage area to the tenant.

The landlord denied that he damaged or knocked over the tenant header box or sluice box. He said that he did not touch or move it when he was moving his own belongings into the basement. The landlord disputed the tenant's claims that his gold extraction device was damaged by the landlord. He testified that he used a high quality wet tile saw that is water cooled and produces little or no dust, to cut some ceramic tiles. He said that he covered the

immediate area around the tile saw with plastic sheeting and the work was done directly in front of his basement access door. The landlord also noted that the tenant provided no receipts or proofs of replacement costs.

The landlord testified that the tenant was not granted exclusive possession of the yard and this was not mentioned in the tenancy agreement. The tenant's objections to the landlord's use of the yard were unfounded.

The landlord said that after the tenant delivered an October 30th Notice to End Tenancy, he went down to the basement to speak to the tenant. He did not enter the rental unit. The landlord said that the tenant became very aggressive and threatened to get a gun if the landlord did not leave the property. On November 2nd the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent.

The landlord testified that the tenant moved out of the rental unit on December 1, 2014 without paying rent for November or December. He claimed unpaid rent for November in the amount of \$800.00 and for one day in December in the amount of \$26. 66. The landlord testified that the rental unit was not properly cleaned. He claimed \$270.00 for labour to clean the rental unit and \$21.00 for cleaning supplies. The landlord acknowledged that there was no move in condition inspection report from the previous landlord. He said that the suite was left dirty and required five hours of total cleaning. All the walls needed cleaning as well as the window sills, doors, baseboards, all windows and window coverings. The stains in the carpet and kitchen floor required two hours of cleaning and two hours was required to shampoo the carpet, The landlord said that all together 9 hours was spent cleaning and he claimed \$30/hour for a total of \$270.00. The landlord said that he was not claiming additional amounts for painting and loss of rental income because the new tenants were delayed in moving in.

The tenant said that the rental unit was not cleaned and the carpet was stained when he moved in. He denied any responsibility for cleaning charges.

Analysis

Addressing first the tenant's claims, no doubt there were changes to the amount of noise and activity at the rental property after the landlord moved in with his family, including young children. The tenant's right to quiet enjoyment may not preclude the landlord from using and occupying his portion of the rental property in a considerate fashion. I find that the landlord did place boundaries and constraints on his and his family's activities to ensure quiet in the evening hours and before a reasonable morning hour. The tenancy agreement did not allocate a specific storage area to the tenant. It appears that the previous landlord did not make use of the basement and by inertia he allowed the tenant's use of the basement storage to expand to fill all the available space. Tensions arose when the landlord, with a large family, moved in and required some of the space for his own use. The landlord was unsuccessful in his efforts to

effect a compromise and the relationship between the landlord and the tenant became increasingly acrimonious.

The tenant claimed that he was justified in ending the tenancy because of what he claimed was disturbance and harassment by the landlord. He requested the refund of rent for a four month period in the amount of \$3,200.00 and payment of moving expenses in the amount of \$920.00. These requests amount to a claim for the refund of rent for almost the entire period of his occupancy after the landlord moved to the rental property, leaving aside the fact that the tenants refused to pay rent for the month of November and moved out December 1st. I find that there is no basis for the tenant's claim for rent refund or for the claim to moving expenses and they are denied. The tenant did not have the right to expect exclusive use and occupancy of the yard or storage areas after the landlord move in because these were not granted to him by the original tenancy agreement. I accept that the noise levels did increase when the landlord moved in, but that fact alone does not entitle the tenant to compensation. The tenant had the right to expect that the landlord would make reasonable and considerate use of the rental property and to take steps to minimize the disturbance to the tenants. On the evidence I find that the landlord and family did place limits on their activities so as not to unduly disturb the tenants.

The tenant claimed that the landlord damaged his air conditioner. The landlord acknowledged that he moved it because it was blocking the basement entrance. I find that he was justified in moving it. The tenant was apparently using some of the space under the balcony and in the basement as his workshop space; he said that he was repairing or checking the air conditioner to ready it for resale and he said that he was setting up his gold sluice equipment in the yard ready to operate when the landlord moved it. The landlord disputed this evidence and he denied moving these items. The tenant has not provided evidence to in the form of invoices or receipts to place any value or replacement cost for them. I find that the tenant has not proven on a balance of probabilities, that the landlord damaged them and he failed to provide sufficient evidence to establish the amount of his loss, if any and these claims are denied. The tenant's claim for a loss or delay in earning income has not been proved and it is also denied.

The tenant claimed payment of double the amount of his security deposit. He sent his forwarding address to the landlord on December 2, 2014. The landlord commenced his application on December 15, 2014, which was within 15 days of the date that he received the tenant's forwarding address as required by section 38 (6) of the *Residential Tenancy Act*; I therefore find that there is no basis for the tenant's claim for payment of double the amount of the security deposit and this claim is dismissed.

The tenants failed to pay rent for the month of November and did not vacate the rental unit until December 1st. I find that the landlord is entitled to recover unpaid rent for November in the amount of \$800.00 and loss of rent for one day in December in the amount of \$25.81.

The tenant disputed the landlord's claim for cleaning; he said the rental unit was not properly cleaned when he moved in and that the carpet was stained. The tenant referred to the absence

of any move-in condition inspection report. Based on the landlord's testimony and the supplied photographs I accept that the rental unit was not acceptably clean when the tenants moved out, but the lack of any condition inspection report to document the condition when the tenants took possession affects my assessment of the landlord's claim for cleaning. I find that the landlord is entitled to compensation for cleaning, but I allow the claim for cleaning for four hours only at a rate of \$15.00 per hour for a total of \$90.00.

Conclusion

The tenant's claim has been dismissed without leave to reapply. The landlord has been awarded the total amount of \$915.81. He is entitled to recover the \$50.00 filing fee for his application, for a total award of \$965.81. I order that the landlord retain the \$400.00 security deposit in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$565.81. 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: August 17, 2015

Residential Tenancy Branch

