



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J.D. Nelson & Associates Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the security deposit. The hearing was conducted by conference call. The landlord's agent and the tenant called in and participated in the hearing. The parties acknowledged receipt of documentary evidence exchanged prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of revenue and repair costs and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental unit is a suite in an older house in Kamloops. The tenancy began on June 1, 2014 for a fixed term ending August 31, 2015. The monthly rent was \$850.00 and a security deposit of \$425.00 and a pet deposit of \$425.00 on May 20, 2014.

On November 1, 2014 the tenant gave notice by e-mail that she intended to move out of the rental unit by December 1st. She said that she was giving her notice: "Due to there constantly being no water, hot or cold". The landlord's agent responded by e-mail. He mentioned steps take to address a water pressure problem and stated the landlord's position that the tenant was responsible for the rent payments for the duration of the term. He suggested that she begin to advertise the rental unit to find a prospective tenant to rent the unit.

The landlord's agent said that the tenant did not take steps to find a new tenant. He commenced to advertise the unit. He complained that the tenant moved some of her belongings in early November, but did not tidy the suite to make it presentable for

showings. He said that the tenant moved out and cleaned the rental unit at the end of November, but did not inform the landlord of the actual date of her move and did not participate in a move-out inspection. The landlord's agent said that the landlord conducted a move-out condition inspection in the absence of the tenant. The landlord noted that the toilet was damaged and there was damage to some walls. The tenant did not provide the landlord with a forwarding address and the landlord did not hear from her until February when the tenant sent an e-mail requesting the return of her pet deposit.

The landlord said that the toilet was damaged and had to be replaced. The landlord claimed the estimated cost to replace the toilet of \$375.00, rather than the actual cost of \$432.08. The landlord said that the unit was not re-rented until January 15, 2015 and then at a lesser monthly rent. The landlord claimed the following amounts:

• Loss of rental income Dec – Jan 15:	\$1,275.00
• Rent differential \$25/month for 7.5 months	\$187.50
• NSF cheque charges for two cheques:	\$50.00
• Advertising costs:	\$29.94
• Toilet replacement:	\$375.00

Total:	\$1,917.44
--------	------------

The tenant said that she left the rental unit because the unit was in such poor condition. She said that the plumbing system was inadequate and there was a lack of hot water and insufficient water pressure. She complained that the house was old and poorly insulated. The tenant described the rental unit as so unacceptably cold in October and November as to be uninhabitable. The tenant complained that her heating bills were much higher than she was told by the landlord. The tenant said there were problems with the toilet during the tenancy, but she denied that had anything to do with the broken tank and lid. She said that she complained about the toilet constantly running without filling the tank and about its failure to flush. She said that on occasion she had to use a neighbour's toilet.

The tenant said that she left the rental unit without providing a forwarding address because she felt intimidated by the landlord and by his caretaker; she said they were rude and acted aggressively towards her. She said that she paid rent for the full month of November, but left two weeks early. The tenant said the rental unit was properly cleaned when she left. She said that the unit was not acceptably clean when she moved in; she mentioned in particular cracks and marks on the walls and ceiling lights

that were full of dead bugs. She said the ceilings were too high for her to clean the light herself and although she was told that someone would come by to clean them, it was never done.

The landlord's agent said that the tenant complained about the low water pressure soon after she moved into the rental unit. The landlord responded by hiring a plumber. The landlord replaced the shower head in the tenant's bathroom and then had the plumber replace all of the galvanized piping in the house, including the main water lines as well as valves and lines to the tub, toilet and sink. The landlord's agent said that on August 30th the plumber reported good pressure and no leaks in the system. He said that he received no further complaints from the tenant until he received her notice on November 2nd.

Analysis

The tenant's reason for ending the tenancy was based on a complaint about the inadequate water supply. It amounts to a claim that she terminated the tenancy pursuant to Section 45(3) of the Residential Tenancy Act because the landlord breached a material term of the tenancy and did not correct it within a reasonable time.

Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant complained about the water supply system after she moved in. The landlord responded to those complaints and performed extensive plumbing work. The tenant did not make any further written complaints until November, when she gave her notice that she intended to move at the end of the month.

I do not accept the tenant's evidence that there was an ongoing water problem after the plumbing repairs were completed, but even if there was a new or continuing problem, I find that the tenant failed to comply with the provisions of section 45(3) of the *Act*. The tenant did not, as required by the Act, give the landlord written notice of the alleged failure to comply with a material term of the tenancy agreement and she did not give the landlord a reasonable period within which to correct the situation. Instead she gave notice that she was moving out, without affording the landlord with an opportunity to

rectify the situation. I find that the tenant did not have proper grounds to end the fixed term tenancy. I find that the landlord acted properly to mitigate its damages by advertising and successfully re-renting the unit commencing January, 15th, albeit at a slightly reduced rent. I allow the landlord's claims for loss of rental income for December to January 15th in the amount of \$1,275.00 and for a rent differential of \$187.50 for the remainder of the term. I allow the claim for advertising costs of \$29.94. I allow the charge for \$25.00 for the December rent cheque that was returned, but I do not allow the charge for January's cheque because the landlord was on notice, after attempting to cash the December cheque, that the account had been closed.

The tenant disputed the landlord's claim for replacement of the broken toilet. She said there were problems with the toilet during the tenancy and she denied that she cracked the tank or the lid. I accept her evidence on this point and I deny the landlord's claim for recovery of the estimated cost to replace the toilet.

Conclusion

I have allowed the landlord's claims in the total amount of \$1,517.44, his claims for an NSF charge and toilet replacement have been denied. The landlord is entitled to recover the \$50.00 filing fee for his application, for a total award of \$1,567.44. I order that the landlord retain the security deposit and pet deposit of \$850.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$717.44. 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 28, 2015

Residential Tenancy Branch

