



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MND, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlord. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing and the tenants were represented at the hearing by their agent and translator.

Issue(s) to be Decided

Are the tenants entitled to any form of remedy including a monetary award?

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?

Background and Evidence

The rental unit is a strata title townhouse apartment in Coquitlam. The tenancy began on September 1, 2014 on a month to month basis with rent in the amount of \$2,200.00 payable on the first of each month. The tenants paid a security deposit of \$1,100.00 at the start of the tenancy.

There have been several dispute resolution proceedings regarding this tenancy prior to the applications before me in this hearing. In April, 2015 the landlord served the tenants with a one month Notice to End Tenancy for cause. The tenant applied to cancel the Notice to End Tenancy and the landlord applied for a monetary award and for an order for possession. A hearing was held on June 10, 2015 and the arbitrator hearing the claims issued a decision dated June 12, 2015. The arbitrator cancelled the Notice to End Tenancy and he dismissed the landlord's application for a monetary award; specifically he refused the landlord's claim for \$10,000.00 for the loss of a sale of the rental unit. He also dismissed the landlord's claim for costs claimed for staging the rental property for sale and for other expenses incurred to list and show the property,

including claims for photography, videography and real estate listing costs. The arbitrator also denied the landlord's claim for payment of costs to repair extraordinary damage in the amount of \$1,150.00 based on his finding that the landlord had not proven that the tenant was responsible for the alleged damage and that it could not be regarded as extraordinary damage in any event.

The landlord filed a further application for dispute resolution which was a direct request proceeding seeking an order for possession and a monetary order for unpaid rent. By decision dated July 27, 2015 the landlord was granted an order for possession and a monetary order for unpaid rent for July in the amount of \$2,200.00.

On July 2, 2015 the tenants filed the application for dispute resolution that is the subject of this proceeding. In the application the tenants requested orders that the landlord make repairs, including emergency repairs to the rental unit. In the details of dispute the tenants said:

The leak in the ceiling used to be leaking and needs to be repaired by the landlord, but the landlord refused to repair it and asked the tenant to repair and pay for the repairment

The tenants moved out of the rental unit on July 23, 2015. They sent a letter to the landlord dated July 23, 2015 informing him that they were moving out.

The landlord conducted a move out condition inspection on July 28, 2015. The tenants' agent was present but he did not participate in the inspection and attended for the sole purpose of handing the keys back to the landlord.

The tenants submitted documentary evidence on August 6, 2015. The evidence consisted of a submission objecting to the decision in the landlord's direct request proceeding and the decision granting the landlord an order for possession and a monetary order for unpaid rent for July. The tenants said that they sent the landlord a cheque in payment of July rent. The landlord submitted documentary evidence from his bank that confirmed that the tenants stopped payment on the July rent cheque and it was returned to the landlord uncashed. The tenants acknowledged at the hearing that the cheque was not negotiated and July rent was not paid.

The tenants amended their application for dispute resolution on August 19, 2015 to claim a monetary award in the amount of \$25,000.00.

In his application for dispute resolution the landlord claimed the following amounts:

a) Damage to property:	\$2,400.00
------------------------	------------

b) One month's rent under section 14 of lease agreement	\$2,200.00
c) Actual damage for not giving access and degrading of property:	\$934.62
d) Tribunal discretion: bad faith, writing bad cheque degrade the property, loss of sale, loss of rental income:	\$5,000.00

The landlord provided a detailed statement of his monetary claim as follows:

• Handy man service quote for repair of floor & ceiling:	\$1,150.00
• Cleaning & garbage removal:	\$250.00
• Carpet cleaning:	\$250.00
• Exterior backyard landscaping and repair:	\$250.00
• Stove & oven:	\$300.00
• Fixing & replacement of window screen:	\$200.00
• One month notice rent under tenancy agreement:	\$2,200.00
• Staging (for showing property for sale)	\$630.00
• Photography & videography:	\$110.25
• Realty photocopy charge:	\$7.62
• Realtor charges for showing:	\$150.00
• MLS listing cost:	\$36.75

Total:	\$5,534.87
--------	------------

Claim for award for bad faith, loss of sale etc:	\$5,000.00
--	------------

The landlord submitted a copy of a quotation from a handyman service company. The document dated August 15, 2015 provided an estimated cost for a ceiling repair in the amount of \$500.00 and for a hardwood floor repair in the amount of \$650.00, for a total of \$1,150.00. The landlord testified that he has not had the work done. The rental unit has not been sold or re-rented. This was a claim advanced by the landlord in an earlier application that was dismissed by the arbitrator in his June 12, 2015 decision.

The landlord referred to photographs of the rental unit and yard. He testified that the tenants left the rental unit in a filthy state and left garbage throughout the unit. The landlord paid \$250.00 to have the unit cleaned. He provided a copy of the cheque in payment of the cleaning services and a statement from the cleaner regarding the terrible condition of the rental unit.

The landlord submitted invoices regarding charges for "staging" the rental unit and for expenses to photograph and list it for sale. These were claims previously made by the landlord that were dismissed by the arbitrator in his June 12, 2015 decision.

The landlord did not provide invoices for any of the other claimed expenses. He said the tenant damaged the stove and he received a verbal quote for repair, but he has not performed the work. He has not cleaned the carpets or performed the other repairs included in his claim. The landlord claimed payment of \$2,200.00 for August rent because the tenants did not give proper notice that they were moving out. He said that he did not receive notice until the tenants sent a letter on July 23rd to say they were moving out. The landlord has not re-rented the unit and has not provided evidence that he took any steps to rent it. The landlord submitted as part of his documentary evidence, a letter from the property manager for the strata corporation dated July 6, 2015. In the letter the property manager informed the landlord that the rental of his strata unit had been permitted upon a hardship basis for a limited period of time that expired at the end of March, 2015. The letter went on to demand that the existing rental must be terminated effective August 1, 2015 and the landlord's failure to comply would result in fines being levied against him until he complied with the requirement.

The landlord claimed a further \$5,000.00. He claimed that he was entitled to an award because of the tenants' "litigious conduct" and bad faith including writing a bad cheque and preventing him from showing or selling his rental unit. He claimed that an award should be made to compensate him for the loss of sale, the loss of rental income and causing the rental unit to be regarded as a "troubled property". In the landlord's first application he claimed an award of \$10,000.00 for the loss of a sale of the rental unit. The arbitrator dismissed this claim in the June 12, 2015 decision. He said that the offer made by a prospective purchaser was conditional, not a final and binding offer and the landlord did not sign the offer or prove that it would have completed. The landlord's claim in this proceeding is a duplication in part of his earlier claim.

In the tenants' application filed on July 2, 2015, they requested a repair order. They moved out of the rental property before the hearing; the tenancy has ended and there is no longer any basis for the tenant's claim for repairs.

The tenants amended their application on August 17, 2015 to claim a monetary award in the amount of \$25,000.00. They complained that the landlord disturbed the tenants and harassed them. They claimed amounts including \$4,000.00 for harassment, \$11,000.00 for supposedly failing to maintain the property, \$4,000.00 said to be for: "Punitive damages of landlord's false evidence", garage rent of \$600.00, a month's free rent and moving expenses of \$1,080.00 as well as the return of the tenant's security deposit.

Analysis

The tenancy ended on July 23, 2015 and consequently the tenant's claim for repairs is dismissed without leave to reapply. The tenants requested that the July 27, 2015 direct

request decision and orders be reconsidered. It was up to the tenants to pursue a review of that decision if they disagreed with it; I have no authority to revisit that decision and the request is denied.

The tenants have claimed damages for harassment and punitive damages as well as an astonishing amount for the landlord's supposed failure to maintain the property. There is no jurisdiction to award punitive damages and I do not find any convincing evidence that the tenants should be compensated for harassment. It is evident from the testimony and from the documentary evidence provided by both parties that the relationship between the tenants and the landlord deteriorated to the point that the parties became hostile and confrontational combatants. The tenants were partly responsible for provoking and escalating the hostilities and I do not find convincing evidence to support an award to the tenants in any amount for harassment or for alleged failures by the landlord to maintain the property; the tenants actively blocked the landlord's efforts to visit the rental unit for any purpose, including effecting repairs. The tenants' monetary claims are dismissed without leave to reapply.

The landlord has repeated several claims decided in a past proceeding and is attempting to revive and re-litigate them. The landlord's claims for expenses to stage the property for sale have already been dealt with and dismissed, as have his claims for damages for loss of a sale and for the sum of \$1,150.00 to repair the hardwood floor and ceiling. These claims are *res judicata*; that is, there has already been a determination of the landlord's claims on the merits and the doctrine of *res judicata* bars the landlord from re-litigating them. The landlord received an award for unpaid rent for July and I find that there is no basis for a monetary award for supposed "bad faith" on the part of the tenants with respect to the July rent cheque.

The landlord claimed payment of the sum of \$250.00 for the cost of cleaning the rental unit and removing garbage. Based on the landlord's testimony and the photographs and statements provided, I find that the landlord is entitled to an award for cleaning and garbage removal in the amount claimed.

The landlord claimed amounts for repairing the stove and oven, for carpet cleaning, for landscaping and yard repair and for repair or replacement of a window screen. He has not performed any of these tasks and submitted no estimates or quotations with respect to them. I find that the landlord has not proved that he is entitled to an award in any amount for these claims and they are each dismissed without leave to reapply.

The landlord claimed payment of rent for August in the amount of \$2,200.00, based on the tenant's failure to give one month's notice to end the tenancy. I find that the landlord is not entitled to an award for August rent; the landlord was seeking to have the tenants move out for several months before the tenancy ended. The landlord has made no

efforts to re-rent the unit and according to his own documents, he was told by the strata property manager that he would not be allowed to rent the unit after July, and if he did so he would be fined by the strata corporation. The landlord was not entitled to continue the tenancy after July and his claim for rental income for August is dismissed without leave to reapply.

Conclusion

The tenant's application has been dismissed without leave to reapply. The landlord applied to retain the tenant's security deposit in the amount of \$1,100.00 in partial satisfaction of his monetary claims. The landlord has been granted a monetary award in the amount of \$250.00. The landlord has been partly successful in his application and I award him \$50.00 of the \$100.00 filing fee for his application, for a total award of \$300.00. I order that the landlord retain the sum of \$300.00 from the \$1,100.00 deposit that he holds, leaving a balance of \$800.00. The landlord has an outstanding monetary order in the amount of \$2,200.00 for July rent. He is entitled to set off and retain the remaining \$800.00 of the deposit in partial satisfaction of that award; consequently I make no order for the return of the balance of the security deposit to the tenants.

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: September 10, 2015

Residential Tenancy Branch

