



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order, an order to recover the filing fee for this application, and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the deposit, a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement and an order to recover the filing fee for this application. Both parties confirmed that they received each other's Notice of Hearing letter, Application for Dispute Resolution and evidence. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on April 30, 2015 and ended on September 30, 2015. The tenants were obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit and a \$550.00 pet deposit. The tenants stated that there was a lot of "friction" between them and the landlord. The tenants stated that the RCMP was present at the move out inspection. The tenants stated that they provided their forwarding address with the officers at the move out inspection so the landlord could have easily obtained it.

The tenants stated that the landlord did not file an application or return the deposit within fifteen days of moving out and should be entitled to the return of double their deposits.

The tenants stated that they feel that they should also be compensated the equivalent of two months' rent as the landlord continually breached their quiet enjoyment in August and September 2015. The tenants stated that the landlord was intrusive, argumentative, and accusatory and entered the unit on numerous occasions without permission or advance notice. The tenants stated they were unable to enjoy their own home as the landlord was always

around making them uncomfortable. The tenants stated that they feel justified in the amount they are seeking.

The tenants stated that the landlord should not be entitled to any of the claims as made. The tenants stated that the damages in the landlords' claim are "bogus" as they were pre-existing. The tenants stated that the landlords' receipts are fakes and should not be relied upon as none of these companies exist. The tenants stated that they were never given a copy of the rental agreement or the condition inspection reports. In addition, the tenants stated that the landlord filled out the inspection report without allowing the tenant to provide any input or the ability to actually write anything on the form except their signature. The tenants stated that the landlords' entire claim should be dismissed.

The landlord gave the following testimony. The landlord stated that the tenants did not provide their forwarding address in writing to him at any time. The landlord stated that the first time he received their forwarding address was when he was served the notice of hearing documents for today's hearing. The landlord denies that he was intrusive or aggressive towards the tenants. The landlord stated that the tenants were the ones that were aggressive and that he was fearful of them. The landlord stated that the tenants were so difficult to deal with that he decided to stop showing the unit to potential renters on September 2, 2015 and thereafter until the subject tenants moved out. The landlord stated that the tenants left the unit dirty with some minor damage that prevented him from re-renting the unit. The landlord is seeking the cost of cleaning and repairs to the unit in the amount of \$992.66 and \$550.00 for loss of revenue for October 1-15, 2015.

The landlord stated that the tenants are responsible for the following deficiencies with the unit and common areas; vehicle left grease in the driveway that caused it to be stained, left carpets dirty with 2 cuts in them, broken kitchen tap, burnt the kitchen counter top, painting of the cupboard required, damage to the outside door, damage to window frame, abandoned couch and love seat, missing keys, missing toilet screw and missing sink plug.

The landlord is applying for the following:

1.	Loss of Revenue	\$550.00
2.	Oil Degreaser	\$11.72
3.	Carpet cleaning	\$94.50
4.	Repair Carpet	\$100.00
5.	Kitchen Tap	\$92.94
6.	Sink Plugs- estimate	\$20.00
7.	Kitchen countertop repair	\$126.00
8.	Toilet Screw missing - estimate	\$5.00

9.	Painting	\$472.50
10.	Red paint on window frame - estimate	\$50.00
11.	Damaged outside door	\$10.00
12.	2 keys not returned	\$10.00
13.	Filing fee	\$50.00
	Total	\$1592.66

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the parties claim and my findings around each are set out below.

Firstly, I deal with the tenants' claims and my findings as follows.

1. Return of double the deposit. - $\$1100.00 \times 2 = \2200.00 .

The tenants stated that they provided the RCMP with their forwarding address and that the landlord could have easily obtained it from them. Based on the tenants own testimony that they did not directly provide the landlord their forwarding address in writing as is required by the Act, the tenants are not entitled to the doubling provision and I therefore dismiss this portion of their application. I will address the distribution of the security and pet deposit at the end of this decision.

2. Compensation for Loss of Quiet Enjoyment - \$2200.00.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The relationship between the two parties is an acrimonious which was very apparent during the hearing. The tenants feel that they are entitled to compensation for the loss of quiet enjoyment based on the actions of the landlord. The landlord felt that he was equally disturbed by the tenants and that they made the living arrangement impossible. I accept that there may be one occasion where the landlord entered the unit without the proper notice, however I do not find this to equate to two months' worth of rent as compensation. In addition, the landlord lived on the property as well so it is reasonable to expect to see him on a regular basis. The tenants have not provided sufficient evidence to satisfy me of the intrusive aggressive behavior that they claim. The tenants have not provided sufficient evidence to satisfy all four of the grounds as listed above and is required, accordingly; I dismiss this portion of the tenants application.

I address the landlords' claims and my findings as follows.

1. Oil Degreaser – \$11.72.

The landlord stated that the tenants' vehicle was leaking oil in his driveway which caused it to be stained. The tenants' stated that their vehicle is a 2014 truck that is still under warranty that doesn't leak. The landlord did not provide sufficient proof on a balance of probabilities that the tenants' truck was the cause of the leak and I therefore dismiss this portion of his application.

2. Carpet Clean, Carpet Repair, Countertop repair and Painting - \$793.00.

The landlord has not been successful in this portion of his claim for the following reasons. The tenant questioned the validity of the receipts submitted to indicate the work was done. The tenant stated that the handwriting is the same on all of the receipts. In addition the tenant made enquiries with the companies and gave testimony that each of the receipts had something wrong with them, whether it be a number that was out of service, an incorrect GST number, wrong address for the business or that the serviceman doesn't recall every attending the unit. I agree with the tenants' position. The landlord stated that the business were all separate but was unable to explain why the handwriting on the receipts were all the same. I find these receipts to be highly suspect and cannot be relied upon. Based on the insufficient and unreliable evidence before me I dismiss each of these claims.

3. Loss of Revenue - \$550.00.

The landlord gave testimony that he decided to stop showing the suite on September 2, 2015 for the balance of the subject tenants' tenancy as he stated "they were too hard to deal with". The landlord has not provided sufficient evidence to support that claim and has failed to mitigate his losses as it outlined above, accordingly I dismiss this portion of his application.

4. Kitchen Tap - \$92.94.

The landlord submitted a receipt for this item that shows it was purchased one month post tenancy. The landlord has failed to provide sufficient evidence to show that the subject tenants were responsible for this damage, accordingly; I dismiss this portion of the landlords' claim.

5. Keys, abandoned couch and loveseat, missing toilet screw, missing sink plugs, red paint on window frame in the living room, damage outside door. - \$95.00.

The landlord has not been successful in this claim for the following reasons. Many of the items above were either estimates or were without receipts' to support the claim. The landlord has not shown the actual "out of pocket" costs incurred. Based on the insufficient evidence before me I dismiss each of these claims.

The landlord has not been successful in his application.

The tenants are entitled to the return of the \$550.00 security deposit and the \$550.00 pet deposit. As the tenants have been partially successful, they are entitled to the return of their \$50.00 filing fee.

Conclusion

The tenants have established a claim for \$1150.00. I grant the tenants an order under section 67 for the balance due of \$1150.00. This order may be filed 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 20, 2016

Residential Tenancy Branch