



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF O

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on August 8, 2016, and updated on August 9, 2016 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants attended the hearing on their own behalves, as did the Landlord. All parties providing testimony provided a solemn affirmation.

On behalf of the Tenants, R.V. testified the Tenants' Application package, which included the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on August 9, 2016. The Landlord confirmed receipt. The Landlord did not submit any documentary evidence.

All parties attended the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the Tenants' Application package. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for emergency repairs?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
4. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2015 and ended on December 16, 2015, when the Tenants moved out of the rental unit. The reasons for moving out in such short order will be addressed more fully below. Rent in the amount of \$1,000.00 per month was due on the first day of each month. The Tenants provided the Landlord with a security deposit of \$500.00, which the Landlord holds.

On behalf of the Tenants, R.V. testified that upon moving into the rental unit, they became aware of several issues. Their concerns included the possibility of rats and asbestos in the rental unit, a sulfur smell in the water, and mold under the kitchen sink.

The Tenants' concerns were raised with the Landlord, who agreed to address them. However, the Landlord did not address these concerns quickly enough for the Tenants, and they made arrangements to have the water tested. The Tenants provided with their documentary evidence a report suggesting levels of coliform and arsenic higher than maximum allowable levels.

According to R.V., the Tenants were concerned about their health and decided to move out of the rental unit, without notice to the Landlord. The Tenants moved out on December 16, 2015. The Tenants sought to recover a number of losses they have incurred, which were set out in a Monetary Order Worksheet, dated August 8, 2016.

First, the Tenants claim they are entitled to recover the cost of water testing as agreed to by the Landlord. The cost of \$225.00 was supported by a receipt.

Second, the Tenants claim they are entitled to recover the cost associated with renting a truck to move their belongings, first into storage and then to a second location. The Tenants' claim is supported by receipts totalling \$243.05.

Third, the Tenants claim to be entitled to recover storage costs incurred because they did not have anywhere to go immediately upon moving out of the rental unit. A storage tenancy agreement indicating a cost of \$262.50 was provided in support.

Fourth, the Tenants claimed to be entitled to recover the cost of drinking water purchased from a local grocery store, in the amount of \$81.70. Again, receipts were provided in support.

Fifth, the Tenants claimed to be entitled to recovery \$9.00 for the cost of serving the Landlord with correspondence which explained their decision to leave and included their forwarding address in writing. The correspondence was sent to the Landlord by registered mail on December 16, 2015. A Canada Post receipt was provided in support.

Sixth, the Tenants claimed to be entitled to recover rent paid for the month of November 2015, or \$1,000.00, based on the results of water testing and their health concerns.

Seventh, the Tenants claimed to be entitled to double the security deposit because the Landlord did not return the security deposit upon being provided with the Tenants' forwarding address in writing.

The Tenants sought to recover the \$100.00 filing fee paid to make the Application.

In reply, the Landlord acknowledged the Tenants expressed the concerns described by R.V. However, she noted there was no timeframe specified for dealing with them. She testified that once the water analysis showed issues, she made arrangements to have the problems addressed. There are currently no issues with the water to the rental unit.

The Landlord also testified that there were no rat issues and the area around the fireplace did not contain asbestos. She also stated the Tenants left a BC Hydro invoice in the amount of \$436.60 unpaid, and that repairs that cost \$600.00 were needed when the Tenants left the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' claim to recover the cost of water testing, I find the Landlord was aware of the Tenant's concerns about the water and had agreed to take steps to address this problem. Accordingly, I find the Tenants have demonstrated an entitlement to a monetary award in the amount of \$225.00.

With respect to the Tenants' claim to recover truck rental expenses, I am not satisfied the Tenants are entitled to recover this amount. I find the Tenants vacated the rental unit without notice, and without giving the Landlord sufficient time to adequately address their concerns. The decision to vacate the rental unit without doing so was the Tenants' decision and the cost of doing so should not be borne by the Landlord.

With respect to the Tenants' claim to recover storage costs, I find there is insufficient evidence before me to conclude they are entitled to recover this amount. Again, I find the Tenants made a decision to vacate the rental unit without notice and without giving the Landlord sufficient opportunity to address their concerns. The cost of their decision to move when they did should not be borne by the Landlord.

With respect to the Tenants' claim to recover water costs, I find it is more likely than not that the water available in the rental unit was not potable, based in part on the test results submitted by the Landlord. Accordingly, I am satisfied the Tenants are entitled to a monetary award of \$81.70 for this expense.

With respect to the Tenants' claim to recover registered mail costs to deliver their forwarding address in writing, I decline to grant recovery of this amount. Providing a forwarding address in writing does not have to be accomplished by registered mail. Other options were available to the Tenants at no cost.

With respect to the Tenants' claim to be reimbursed November 2015 rent, I am not satisfied the Tenants have demonstrated an entitlement to this amount. The Tenants occupied the rental unit from at least November 1 to December 16, 2015, and moved out of the rental unit without notice to the Landlord, and without paying rent for December 2015.

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

In this case, I find that the Tenants provided their forwarding address to the Landlord by registered mail on December 16, 2015. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord is deemed to have received the Tenants' forwarding address in writing on December 21, 2015. Accordingly, the Landlord had until January 5, 2016, to return the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. She has done neither.

Section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and ***must*** pay the tenant double the amount of the security deposit. This is repeated in Residential Tenancy Branch Policy Guideline 17(B)(11), which states:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Accordingly, I find the Tenants are entitled to the return of double the security deposit retained by the Landlord, or \$1,000.00 (\$500.00 x 2).

Having been successful, I also find the Tenants are also entitled to recover \$100.00 from the Landlord in satisfaction of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the tenant a monetary order in the amount of \$1,406.70, which has been calculated as follows:

Claim	Amount allowed
Water testing:	\$225.00
Water:	\$81.70
Double security deposit:	\$1,000.00
Filing fee:	\$100.00
TOTAL:	\$1,406.70

Conclusion

The Tenants are granted a monetary order in the amount of \$1,406.70. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 6, 2017

Residential Tenancy Branch