



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MNDC, MND, MNR, FF
TENANT: MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, for unpaid rent and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on August 30, 2018, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on July 11, 2018 in accordance with section 89 of the Act.

The Tenant and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Is there unpaid rent and if so how much?

6. Are the Landlords entitled to unpaid rent and if so how much?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on June 15, 2012 as a fixed term tenancy for 1 year with an expiry date of July 1, 2013. The tenancy then continued on a month to month basis. Rent was \$1,750.00 per month payable on the 1st day of each month. There is an addendum agreement that increases the rent by \$250.00 if the Tenant sublets the basement suite. The Tenant paid a security deposit of \$875.00 and June 3, 2012. The Tenant said no condition inspection reports were completed for this tenancy. The Tenant received \$675.00 of her security deposit back on May 23, 2018, which was the day the tenancy ended.

The Tenant said she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated March 31, 2018. The Tenant said the reason for the Notice to End Tenancy was that the Landlord had the permits required to demolish or renovate the rental unit and the renovations required the Tenant to move out. The Tenant said the Landlord did some minor renovations including a new floor in the kitchen, some maintenance work and some painting but no major renovations were done. The Tenant said the Landlord rent the unit to a new tenant on July 1, 2018.

Consequently the Tenant said the Landlord was not acting in good faith with the Notice to End Tenancy because she did not have to move out for the renovations that were done. The Tenant said she did not want to move. The Tenant continued to say that under section 51 of the Act if a Landlord does not act in good faith and does not complete the reasons on the Notice to End Tenancy then the Landlord must pay the Tenant twice the amount of monthly rent as compensation for ending the tenancy. The Tenant said the rent was \$2,000.00 per month so she is requesting $\$2,000.00 \times 2 = \$4,000.00$ plus the filing fee of \$100.00 if her application is successful.

The Landlord's agent said the relationship between the Landlord and the Tenant had broken down and the Landlord's wanted to end the tenancy. The Landlord's agent continued to say the Tenant and her husband had done many unauthorized renovations to the rental unit so the Landlord felt they had to end the tenancy to complete the repairs to the unit. The Landlord's agent said they replaced two doors, 2 cabinet doors, two light fixtures, replaced one set of curtains, rewired the thermostat, repaired a duct in the heating system, hired a contractor to repair the electrical panel and replace the panel door, as well they painted and cleaned the unit for mould and cleaned the fireplace. The Landlord's agent said that not any one of these items is a big renovation

but putting them altogether and the work required the Tenant to move out of the rental unit so they could complete the repairs. The Landlord's agent said he believes they completed the reason on the Notice to End Tenancy. The Landlord's agent confirmed that the unit was rented to new tenants on July 1, 2018.

The Landlord's agent continued to say they have made an application for the cost of the renovations because they believe the reasons for the renovations were caused by the Tenant's actions. The Landlord's agent said the Tenant made changes to the heating system, the electrical system and changed the doorways in the rental unit. The Landlord agent said the changes to the heating system caused mould issues in the rental unit which they hire a heating and air conditioning company to repair. Further the Landlord's agent said the electrical changes were unsafe and he got a contractor to repair the electrical panel. The Landlord's agent said the other repairs were done by himself and his father and he has submitted their hours of work at \$30.00 per hour. The Agent also submitted estimates and receipts for materials. The Landlord's agent said their total cost of renovations were \$4,637.06.

Further the Landlord's agent said they are applying for unpaid rent of \$1,150.00 for April 2018 and unpaid rent for a second basement tenant of \$250.00 for four month in the amount of \$1,000.00. The Landlord's agent said the addendum to the tenancy agreement says that if the Tenant sublets the basement the rent will go up by \$250.00 per month. The Landlord's agent said there were two people in the basement so that amount should be \$500.00 per month and the Tenant only paid \$250.00 per month.

The Landlord's agent said he is also requesting \$600.00 for his time to prepare the hearing materials, \$12.55 in mailing costs and the \$100.00 filing fee if his application is successful. The Landlord's agent said the Landlord's total claim is \$7,499.61.

The Tenant said in response to the Landlord's application that they had verbal authorization for the changes they made in the unit and the Landlord A.P. had inspected the changes on occasions. Further the Tenant believes the Landlord made their application as a response to her application as they agreed at the end of the tenancy the Tenant would receive \$675.00 of her security deposit back as settlement for any damages. The Tenant said that was full settlement of the any damages or repairs to the rental unit. The Tenant said the Landlord gave her a cheque for that amount at the walk through at the end of the tenancy.

Further the Tenant said she had made a verbal agreement with the Landlord A.P. that the April 2018 rent would be reduced to \$600.00 because of a flood and the basement which caused the basement tenants moved out.

The Landlord's agent said the rent was only reduced from \$2,000.00 to \$1,750.00 because the basement tenants moved out and the Tenant only paid \$600.00 of rent for April 2018.

The Landlord's agent said his father did inspect the changes the Tenants did to the rental unit while the work was being done as his father had to make an appointment with the Tenants to enter the rental unit. The Landlord believes the Tenants wanted an appointment because the Tenants had a dog in the unit which was not allowed under the tenancy agreement. The Landlord's agent said the Tenants also allowed the sublet tenants to have a cat in the unit without authorization. The Landlord's agent said they wanted to end the tenancy for a number of reasons.

The Tenant continued to say the Landlords were fully aware of the changes they were making to the rental unit and they purchased a hot water tank, washer and dryer and a stove for the unit. The Tenant said these items were left in the unit as part of the settlement at the end of the tenancy. The Tenant said the unit was in better condition when she left than when she moved in. The Tenant said that there was mould in the unit when they moved in, the kitchen cabinet doors were broken and the unit was old.

The Landlord's agent said the Landlord did not authorize the Tenants to change the unit and that is what caused the need for renovations. Further the Landlord's agent said they wanted to end the tenancy so they gave the Tenant part of her security deposit back just to end things. The Landlord's agent said he was shocked when he received the Tenant's hearing package and request for \$4,000.00.

The Landlord's agent said in closing that the Tenants damaged the unit to the point they had to end the tenancy to repair the damages. Further the Landlord's agent said they completed the reason given on the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The Tenant said in closing the work done at the unit did not warrant an eviction Notice as she could have worked around the repairs and stayed in the unit. The Tenant said some of the repairs have not been done as of yet. The Tenant said the Landlord did not evict her for a proper reason and he did not complete the reason he said the eviction was for. The Tenant said the Act says that she should be compensated 2 times the monthly rent of \$2,000.00. Further the Tenant said all the repairs the Landlord's agent is talking about were taken into account at the move out walk through on May 23, 2018 when the Landlord gave her \$675.00 back of her original deposit of \$875.00.

Analysis

The Act says in section 51:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if (The 12 month provision was enacted on May 17, 2018 prior to that the provision read as 2 months).

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Parties to a tenancy must act in good faith at the start of the tenancy, during the tenancy and at the end of a tenancy. This is particularly true when issuing a Notice to End Tenancy. A Landlord cannot end a tenancy to do cosmic or minor repairs to a rental unit. The level of repairs or renovations to a unit **must** justify that ending the tenancy is because the rental unit is uninhabitable. This means systems like the plumbing, heating, electrical etc., are not functioning and will not function for an extended period of time. The renovations the Landlord's agent has described including repair of an electrical panel, replacement of a heating duct, light fixture replacement, door repairs and mould mitigation by painting are not reasons to issue a 2 Month Notice to End Tenancy for Landlord's Use of the Property. Consequently I find that the Tenant has established grounds to show the Landlord did not act in good faith and the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated March 31, 2018 was not completed to the standard required by the Act and regulations. I award the Tenant 2 times the monthly rent of \$2,000.00 in the amount of \$4,000.00.

Further in regard to the Landlord's application.

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants said there was a verbal agreement for the reduced rent for April 2018, but there is no corroborative evidence of that. I find the Tenant does not have the right to

without all or a part of the rent when it is due. I award the Landlord \$1,150.00 of unpaid rent for April 2018 to the Landlord.

With regard to the Landlord's claim of \$1,000.00 of unpaid rent for the second tenant in the basement. The addendum says the rent is \$250.00 extra if the basement is rented out and only one occupant is allowed. I find there is no financial provision for a second occupant therefore I dismiss the Landlord's claim for \$1,000.00 of unpaid rent for a second person in the basement unit.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As no condition inspections were completed for this tenancy the Landlord is unable to establish the condition of the rental unit at the start or the end of the tenancy. It is the Landlord's responsibility to complete these report and the reports are done to clarify any damage and what the agreement is on the security and or pet deposits.

Further the Tenant said the Landlord A.P. was aware of the Tenant's renovations and the Landlord's agent said the renovations were unauthorized and unknown to the Landlord.

The parties agreed the Landlord A.P. made an appointment to view the rental unit while the Tenant's work was being done. Therefore on the balance of probability, I find that the Landlord A.P. most likely knew the Tenants were renovating the rental unit and he did not stop the renovations or take any action to illustrate that he did not want the renovations to continue. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

As there are no inspection reports completed and the Landlord most likely knew about the Tenant's renovations, I find that the Landlord has not established proof that the Tenant damaged the rental unit. Consequently, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply. The Landlord's claim for \$4,637.06 is dismissed without leave to reapply.

Further the Landlords claim for \$600.00 for hearing preparation and \$12.55 for mail costs are both ineligible claims under the Act as these claims relate to the hearing process not the tenancy. These two claims are dismissed without leave to reapply.

As the Tenant has been successful in this matter, she is also entitled to recover from the Landlord the \$100.00 filing fee for this proceeding.

As the Landlord was mostly unsuccessful in this matter the Landlord is ordered to bear the cost of the filing fee that he has already paid.

I grant a monetary order to the Tenant as follows:
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	Tenant's claim	\$ 4,000.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$ 4,100.00
Less:	Landlord's Unpaid Rent	\$ 1,150.00
	Subtotal:	\$ 1,150.00
	Balance Owing	\$ 2,950.00

Conclusion

A Monetary Order in the amount of \$2,950.00 has been issued to the Tenant. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: October 23, 2018

Residential Tenancy Branch