



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL**
 MNDCT

Introduction

This hearing dealt with applications filed by both the landlord and the tenants pursuant to the *Residential Tenancy Act* ("Act").

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damage to the rental unit pursuant to section 67.

The tenants applied for:

- A monetary order for damages or compensation pursuant to section 67.

The landlord attended the hearing and both of the tenants attended the hearing. The tenants were represented by co-tenant, MP ("tenant"). As both parties were in attendance, exchange of documents was canvassed. Both parties acknowledge receiving one another's Application for Dispute Resolution Proceedings Packages and stated they had no concerns with timely service of documents. I find the Application for Dispute Resolution Proceedings Packages were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to compensation equal to 12 months' rent?

Is the landlord entitled to compensation for damages to the rental unit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that I would refer to any of the documents they specifically referred to in testimony in this decision. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit consists of an entire single-family home. The tenant JH moved into the rental unit in November 2017 with a different co-tenant. At that time, a condition inspection report was signed by the landlord, the tenant JH and the original co-tenant. A new tenancy agreement was signed when the original co-tenant moved out and MP moved in on May 1, 2018. A copy of that tenancy agreement was provided as evidence by the landlord. Rent was set at \$2000.00 payable on the eleventh day of each month. A security deposit of \$1000.00 was collected from the tenants but was returned to them at the end of the tenancy. A condition inspection report was conducted on July 10, 2019, the last day of the tenancy. A copy of the condition inspection report was provided as evidence by the tenant. On the condition inspection report, no damages were noted at the end of the tenancy.

The tenant provided the following testimony. The landlord tried to 'bully' them into giving up a portion of the property so she could store some of her property there. She tried to get the tenants to give up one of their bedrooms to her, later seeking to park a trailer on the property. Both requests were refused. On May 11, 2019, the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use ("Notice"). The effective date of the Notice was July 10, 2019 and the reason for ending the tenancy stated was:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse).

The tenants vacated the rental unit pursuant to the Notice. The tenants testified their friends living in the neighbourhood noticed a 'for sale' sign posted on their former residence 3 weeks after the effective date on the Notice. The tenants referred me to the photographs of the 'for sale' sign taken of the property and screenshots of the MLS listing for the property. The listing indicates it was listed on August 1, 2019.

The tenants testified that the carpets were unclean when they first moved in and left in the same condition as original when they moved out. The landlord had told them in a

text message that she was going to rip out the carpet once the tenants moved out. Any trees that may have died during their tenancy had pre-existing health issues and that they were already dying. Regarding the landlord's claim for using the firewood, the tenants claim the landlord was well aware they were using the wood. They even complained to her about the quality of the wood, that some of it was rotten and they had the landlord's permission to use it.

The landlord provided the following testimony. She felt she had the right to store her trailer on the rental property during the tenancy after seeking advice regarding this issue. She moved into the rental unit immediately after the tenancy ended and has been occupying it ever since. She admits she listed the residence for sale in August, indicating she has a right to do so. The landlord testified she doesn't see where she is forbidden from listing the property while she lives in it; the fact that it is for sale is irrelevant. During cross-examination, the landlord acknowledged her employment is on the mainland of BC, she rents a place in the lower mainland, but commutes back and forth by ferry between the two locations.

The landlord testified the trees died during the tenancy because the tenants didn't water them. They died from neglect and the landscaping suffered during the tenancy. She waited until the tenancy was over to cut down the dead trees because she wanted to keep the firewood for herself, rather than allow the tenants to use it. The landlord provided 2 invoices from a tree service company in evidence, totalling \$1,167.50. The tenants were not allowed to use any of the firewood stored at the rental unit. It was not included in the tenancy agreement and the landlord didn't realize it had been used up until after the tenants had vacated it. The landlord seeks the equivalent of 3 chords of wood at \$160.00 per chord as compensation. The grass died during the tenancy and the landlord seeks compensation to have a professional lawn care company visit 7 times to have it brought back, a total of \$2,271.15.

Analysis – tenant's claim for 12 months compensation

Section 51 of the *Act* states a tenant who is served with a Notice to End Tenancy for Landlord's Use ("notice") pursuant to section 49 is entitled to compensation in an amount equivalent to 12 times the monthly rent if 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 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.

The effective date on the Notice was July 10, 2019. The evidence of the landlord is that she is occupying the residential property and has done so since the tenancy ended. I find that the tenants application seeking compensation pursuant to section 51 of the *Act* is premature as the stated purpose for ending the tenancy, namely to 'occupy' the rental unit has not happened for a duration of at least 6 months at the time of this hearing. As the tenants' application is premature and cannot be properly adjudicated upon until the 6 month period has ended, I dismiss the tenants' application with leave to reapply.

Analysis – landlord's claim for damages

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The tenants testified that the landlord told them in writing via text message that they were told not to clean the carpets as the carpets were going to be ripped out. I find the landlord had relieved them of the obligation to clean the carpets when she told them in writing she was going to replace the carpets. The landlord's claim for carpet cleaning is dismissed.

The landlord seeks the sum of \$2,271.15 for lawn care, \$1,167.50 for tree removal and \$973.95 for ferry travel to take care of the yard. Looking at the condition inspection report provided as evidence, the landlord did not record any issues with dead trees or unkempt lawn under section R – exterior. Section Z, where damage to the rental unit or residential property for which the tenant is responsible at the end of the tenancy is left noticeably blank. Section 21 of the Residential Tenancy Regulations state:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection,

unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 20(2) of the Regulations state:

a condition inspection report completed under section 35 of the Act [condition inspection: end of tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

The parties agree the landlord did not indicate in the condition inspection report that there was a dead tree or dying grass caused by the tenants neglect. Nor did the landlord itemize any damage to the residential property for which the tenants were responsible. The landlord returned the security deposit and pet damage deposit to the tenants in full. These facts lead me to believe that the landlord did not hold the tenants responsible for any damage to the yard, trees or grass. I find the landlord has not provided sufficient evidence to show the tenants did damage to the residential property as the landlord claims. The landlord's claim for the lawn care, ferry travel and tree removal is dismissed.

Lastly, the landlord claims the tenants used her wood without permission, pointing to the tenancy agreement which did not indicate they could use it. The tenants countered that the tenancy agreement didn't prohibit them from using it and they had the landlord's verbal permission to burn it. As the burden of proof is upon the person making the claim, I find the landlord has not shown on a balance of probabilities that the tenants were prohibited from using the firewood. The landlord's claim for 3 chords of wood is dismissed.

Only the landlord applied to have her filing fees recovered. As the landlord's application was not successful, the landlord is not entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application is dismissed with leave to reapply.

The landlord's claim is dismissed without leave to reapply.

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: December 4, 2019

Residential Tenancy Branch