



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL
 MNSD, MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant.

The landlords have applied for a monetary order for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for a monetary order for return of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The landlords have not provided any evidentiary material, and the tenant served the landlords with evidence by registered mail, however the landlords did not claim it. The tenant has provided a Canada Post cash register receipt dated July 26, 2021 containing 2 tracking numbers as well as Registered Domestic Customer Receipts and other registered mail evidence, however the dates are not visible. Photographs of the envelopes addressed to the landlords individually have also been provided, and I accept that the tenant has provided the evidentiary material to the landlords in accordance with

the *Act* and Rules of Procedure. All of the tenant's evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for cleaning?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for return of the security deposit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages for loss of quiet enjoyment of the rental unit?

Background and Evidence

The first landlord (TI) testified that this fixed-term tenancy began on February 1, 2021 and was to revert to a month-to-month tenancy after August 31, 2021, however the tenant vacated the rental unit without notice to the landlords on May 30, 2021.

Rent in the amount of \$2,200.00 was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,100.00, which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a furnished basement suite, and the landlords reside in the upper level of the home.

On May 30, 2021 the landlord came home from work and there were strangers in the driveway filling up a car. The landlord approached a friend of the tenant who advised that the tenant was moving out, and that they were excited about moving into a bigger place. The landlord knocked on the tenant's door, but the tenant didn't answer. The friend told the landlord that the tenant had just sent the landlord a text message. The message stated that the tenant was moving out, felt threatened, and if the landlords proceeded to interfere with move-out, the tenant would call the police. It seemed like a calculated situation.

During the tenancy the tenant complained that the sofa wasn't comfortable, so the landlords purchased a new one. Then the tenant was upset that a mirrored window at the front had no covering and wanted more privacy. The landlord purchased a film to put over it.

Also during the tenancy the landlord notified the tenant that the landlord was going to pressure wash the upstairs deck and advised that the tenant's deck might get wet. The next day, the tenant complained that the landlord had made a mess of the tenant's patio. The landlord agreed, apologized for the oversight and told the tenant it was not intentional. The landlords' son swept it and used a blower.

A few days later the landlord received another nasty text message from the tenant saying that the landlord's spouse shouldn't be so ignorant and explained that the landlord's spouse had no consideration and hosed the patio again. The landlord testified that the landlord's spouse had any idea about the previous cleaning. When the landlord arrived home, the landlord checked the tenant's patio and nothing was noted. However, a few weeks later, the tenant blasted the landlord again, stating that the landlord's spouse had plenty of time to clean up the mess. The landlord told the tenant it didn't appear to be that bad, and the landlord and spouse cleaned it again, which took about 10 minutes. The landlord's spouse went to tell the tenant that it had been cleaned, but the tenant was taking video of the landlord's spouse. The conversation became heated, and the tenant told the landlord to "Put a muzzle on that bitch's face."

The landlord texted the tenant the next day expressing disappointment and wanted to put it behind them, but never heard anything back. The tenant was loading up her car 2 or 3 weeks later.

Three weeks later the tenant sent another email to the landlord, which was carefully calculated, planned and pre-thought. It claims that the landlords were doing renovations which were intrusive and caused on-going and disruptive noise, but there were no renovations, just painting. The tenant had also complained about a smoke detector sounding, but the landlord is a fire chief, and the tenant never notified the landlord about it. The tenant also complained that the bathroom fan was not functioning, and the landlord expressed to the tenant that if it was annoying the landlord would have it re-wired. The landlords' son is an electrician and disconnected the fan.

In April, 2021 the tenant also complained that there were no screens on windows. The landlord explained that none of the landlords' windows have screens either and there are no bug issues.

The tenant's email also stated that painting lasted 2 weeks, but only trim and doors and some touch-ups were done, and painters were paid for 3 days. The painter told the landlord that they let the tenant know they would be painting around the tenant's windows and the tenant was rude and unhappy. The painters put a tarp or similar item on top of the tenant's flowers in the planter.

The tenant also complained about loss of use of the full back yard. The landlord put some top-dressing there. The tenant's daughter is a talented baseball pitcher, but the landlord testified that the dirt should not have stopped them from carrying on; they could have used it.

The rental unit had previously been rented on Air BNB, and the landlords blocked out the reservations calendar for the month of June, 2021 due to COVID. The rental unit was re-rented on July 3, 2021.

The landlords claim \$2,200.00 for June's rent, \$125.00 for cleaning and recovery of the \$100.00 filing fee. No receipt for cleaning has been provided, and no move-in or move-out condition inspection reports were completed.

The landlords received the tenant's forwarding address in an email on June 13, 2021.

The second landlord (CI) testified that the landlord had only met the tenant twice. The first was an interview outside the suite for about 10 or 15 minutes. The landlord never saw the tenant again until knocking on the tenant's door to apologize for messing up the patio. The tenant was angry, and the landlord got angry back. As the landlord apologized, the tenant told the landlord that the landlord has problems with the landlord's spouse and they should get counselling. The tenant also told the other landlord to put a muzzle on the landlord's mouth in front of the landlord. The landlord was scared of the tenant at that point and left. The tenant kept going and going, and the landlord asked the tenant to go back into the rental unit, but the tenant continued to bark at the landlord, being rude and disrespectful. The landlord never threatened the tenant in any way as accused in a text message. The landlord tried several times to have it stop, but there was no getting through to the tenant.

The landlords cleaned the patio because the tenant wanted them to, which took about 10 minutes. On moving day, the landlord stayed in the house and never talked to the tenant; was scared "shitless."

The tenant testified that there were so many problems from the first day of the tenancy, and parts of the contract were not fulfilled. The tenant didn't feel safe, and was upset

about the confrontation on May 26 when both landlords went to the tenant's door. The tenant found a place and left.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$10,500.00:

- \$2,200.00 for February rent and breach of terms;
- \$2,200.00 for March rent and breach of terms;
- \$2,200.00 for April rent and breach of terms;
- \$2,200.00 for May rent and breach of terms;
- \$1,100.00 for return of the security deposit;
- \$100.00 for damages for flowers destroyed;
- \$500.00 for time off work for moving and completing application; and
- \$100.00 for recovery of the filing fee.

The tenancy agreement provides for 2 parking spots, but there was only 1, and the tenant has 2 cars. Window coverings were also to be provided, but the door was half window and had no covering. The landlord said he would install film, but didn't have the time. The tenancy agreement also provides for storage, but there was none.

Additional issues with the tenancy include the fire alarm going off continuously even by frying an egg. The bathroom fan ran 24 hours per day, and the tenant asked the landlords many times to fix it. The landlords' son finally fixed it. The tenant also notified the landlord about screens, but the landlords didn't have any.

Things started to take a turn on February 2, 2021 when the tenant asked the landlord to attend to issues, such as window coverings, but the landlord didn't attend until more than a week later. The landlord also said that storage space would be provided, but the landlord never made room for that. The same applies to the window covering and fan. Further, it is absolutely not true that the tenant didn't mention the smoke detector and testified that the landlord was notified several times.

Painters were there over 2 weeks; perhaps they only got paid for 3 days but were there multiple times over a few weeks and left stuff piled in a heap several times. The tenant was able to pressure wash paint from the tenant's car which was in the driveway during the painting. Paint got on shoes and things outside with no regard for the tenant whatsoever.

During the tenancy the landlord had been working on the deck, pressure washing and painting for quite some time. Murky paint water was pouring on the tenant's patio which took more than 10 minutes to clean. The first time, the tenant cleaned it and after the

third time the tenant told the landlord it was not acceptable and that the tenant shouldn't have to clean it or tell the landlord to clean it. As soon as they did clean it, the landlord (CI) arrived for a fight, shaking a finger in the tenant's face. When the tenant started feeling vulnerable, the tenant turned on the video phone. It went on for quite some time.

Following that event, the tenant found another rental unit and made arrangements to leave, texting the landlord asking that the tenant be permitted to have a peaceful move. The landlord (CI) told the tenant's friends that the landlords were there for a fight and the friends told the tenant to stay inside.

The tenant provided the landlords with a forwarding address in an email dated June 13, 2021 and a copy has been provided for this hearing.

The tenant's witness testified that while visiting the witness observed a smoke detector going off in the rental unit. On more than 1 occasion the witness saw water, dirt and debris and paint sludge off the landlord's deck. The bathroom fan couldn't be turned off and ran continuously. There were no window coverings on the entrance door. The driveway was only long enough to take things out of the witness' truck, and hung off the driveway.

Analysis

Firstly, with respect to the landlords' application, a tenant must give notice to end a tenancy, and in the case of a fixed-term, such a notice must not be earlier than the end date of the fixed term. In this case, the tenant claims that the tenant was justified in ending the tenancy early and without notice, but I disagree. The landlord testified that the rental unit was re-rented for July 3, 2021, and the tenant vacated without any notice to the landlords on May 30, 2021. Therefore, I find that the landlords have established a claim of \$2,200.00 for June's rent.

The landlords also claim \$125.00 for cleaning the rental unit after the tenant had vacated, but have not provided any evidence to substantiate that. The landlords have not provided a receipt, have not provided any testimony with respect to lack of cleaning, and no move-in or move-out condition inspection reports were completed. Therefore, I dismiss that portion of the landlords' application.

With respect to the tenant's claim, in order to be successful in a claim for damage or loss, including loss of quiet enjoyment, the tenant must be able to satisfy the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the landlords' failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate any damage or loss suffered.

I accept that the parties had a confrontation, but instead of mitigating, the tenant told one of the landlords to "Put a muzzle on that bitch's mouth." The tenant did not suffer any damages due to the pressure washing, but was inconvenienced once about it, and I accept that it took little time for the landlords to clean it.

I accept that parking for 2 vehicles and window coverings are included in the tenancy agreement, but no evidence has been provided by the tenant, nor any testimony that the tenant suffered any losses as a result of a failure by the landlords to provide a longer parking spot or a cover over the front door window.

I find that all of the complaints of the tenant are minor in nature, are not cause to end the tenancy early and are not worthy of compensation. I am not satisfied that the tenant should recover any of the rent paid to the landlords.

With respect to the claim of \$100.00 for damages to flowers, the tenant has not provided any evidence that any such flowers belonged to the tenant or any proof of the cost.

The tenant also claims \$500.00 for time off work for moving and completing the application, but has not provided any evidence of the amount of money the tenant makes or lost. I am not satisfied that any loss was due to the landlords' failure to comply with the *Act* or the tenancy agreement.

I find that the tenant simply decided to move out and bring this claim in the hopes of avoiding having to pay rent for June, 2021 or stay until the end of the fixed term.

The tenant's application is hereby dismissed.

The parties testified that the tenant's forwarding address was provided to the landlords by email on June 13, 2021. The landlords made the Application for Dispute Resolution claiming the security deposit on June 25, 2021 which is within the 15 days as required by the *Residential Tenancy Act*.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Having found that the landlords are owed \$2,200.00 for June's rent and recovery of the \$100.00 filing fee, I order the landlords to keep the \$1,100.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlords as against the tenant in the amount of \$1,200.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the landlords to keep the \$1,100.00 security deposit in partial satisfaction of the landlord's claim, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00.

This order is final and binding and may be enforced.

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 02, 2021

Residential Tenancy Branch