



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

At the hearing the landlord advised that on his application he had made an error when he checked the box requesting to retain the security deposit and stated that he did not intend to make that claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as requested?

Background, Evidence and Analysis

The rental unit is the main floor of a heritage home in which there are a total of three suites.

The respondents in this action are D.B. and G.B.. In July 2007 the landlord entered into a tenancy agreement with D.B. and two other parties at which time the landlord collected a security deposit in the amount of \$500.00. The tenants who were originally tenants with D.B. vacated the rental unit midway through 2008. The landlord testified that part of the security deposit was returned to one of those tenants and that individual gave the landlord permission to retain the balance of the deposit. On or about June 30, 2008 the landlord entered into a tenancy agreement with the respondents. The tenancy agreement acknowledges receipt of a \$550.00 security deposit. At the hearing the landlord testified that the tenants submitted cheques for rent and for the security deposit which were unsigned. The landlord testified that because he did not receive signed cheques, he did not sign the tenancy agreement.

The tenant D.B. was arrested in July 2008 and did not return to the rental unit after his arrest. The tenant G.B. stayed at the rental unit until the end of August. G.B. acknowledged having paid \$540.00 in rent for the month of August. The parties agreed that the tenants were obligated to pay \$1,100.00 in rent each month. Some time in August, G.B. was served with a 10-day notice to end tenancy for unpaid rent. G.B. vacated the rental unit on August 27 and did not return to the unit after that date. G.B. acknowledged having left behind some of his belongings, including furniture, kitchen supplies and clothing. Other persons continued to occupy the rental unit after G.B.'s departure. G.B. denied knowing these individuals and suggested that they may have broken into the rental unit.

I address the landlord's claims and my findings around each as follows.

- [1] **Registered mail charges.** The landlord seeks to recover \$95.96 as the cost of sending evidence to the tenants via registered mail. Under the Act I do not have the authority to award any litigation-related expenses other than the cost of the filing fee paid to bring this application and accordingly this claim is dismissed.
- [2] **Furniture and garbage removal.** The landlord seeks to recover the cost of removing furniture and garbage abandoned by the tenants at the end of the tenancy. The landlord testified that when the tenants vacated the rental unit, they left garbage and furniture including couches and mattresses, as well as clothing and various other items in the rental unit. The landlord further testified that after G.B. vacated the unit, the landlord decided the people in the rental unit were squatters and he moved the items outside the rental unit and returned on a later date to move the abandoned items from outside the unit to the dump. The landlord testified that he also sorted through clothing at the request of the tenants' agent. The landlord claims that on the first occasion, it took 4 men 6 hours at a rate of \$25.00 per hour to move the abandoned items. On a second occasion, it took 2 men 5 hours and on a third occasion 2 men spent 8 hours moving items. The landlord also claims \$23.90 in dump fees. The tenants acknowledged having left items in the rental unit, but disputed that it could have taken a total of 50 man-hours to move the items left behind as they claim there were no more than 5 large pieces of furniture, some clothing and a few smaller kitchen items. The landlord

provided no photographs of the rental unit at the end of the tenancy or supporting evidence showing the volume of items which had to be removed. I am satisfied that the landlord was required to expend time and labour to move abandoned items, yet I am not persuaded that 50 man-hours is a reasonable claim in light of the tenants' testimony as to the amount of furniture and other items which were abandoned. I find it reasonable to compensate the landlord for 20 man-hours at a rate of \$25.00 per hour for a total of \$500.00. I find that the landlord is entitled to recover the \$23.90 in dumping fees and I award the landlord a total of \$523.90.

[3] **Cleaning.** The parties agreed that the landlord was entitled to recover \$182.83 as the cost of cleaning the rental unit. I award the landlord \$182.83.

[4] **Repairs.** I award the landlord \$1,106.78 for this claim which represents the following costs of repairs:

- a. **Screws.** The landlord seeks to recover \$5.45 paid for screws to repair the door to the master bedroom. The landlord testified that he used the screws in an attempt to repair the door, which had been kicked in. Although that attempt was unsuccessful, I find that the landlord acted reasonably to attempt to minimize his loss. As the tenants acknowledged responsibility for the damage to the door, I find that the landlord is entitled to recover \$5.45 as the cost of screws.
- b. **Panel repair.** The landlord seeks \$14.49 as the cost of repairing wainscoting in the rental unit. The parties agreed that the tenants had kept motorcycles in the rental unit and the landlord testified that some of the panels on the wainscoting had been damaged, theorizing that the damage was caused by the handlebars of the motorcycles. The tenants denied having caused any damage to the wainscoting. Because the landlord did not submit photographs of the rental unit at the end of the tenancy and the parties did not provide a copy of a condition inspection report completed at the beginning of the tenancy, I have no means by which to determine whether the damage occurred or whether that damage was pre-existing. I find that the landlord has not proven that the panels were damaged or that the damage did not pre-

date the tenancy and accordingly I dismiss the landlord's claim.

- c. **Painting.** The landlord seeks \$498.75 as the cost of painting the bedroom and bathroom in the rental unit. The landlord testified that the rooms were last painted in 2006. The tenants testified that the walls were in poor condition when they moved into the rental unit. In the absence of a report showing the condition of the rental unit at the beginning of the tenancy or photographs or a report showing the condition at the end, I find that the landlord has not proven that painting was required or that the damage to the walls did not pre-date the tenancy and accordingly I dismiss the landlord's claim.
- d. **Carpets.** The landlord seeks \$2,586.95 as the cost of replacing the carpets in the rental unit. The landlord testified that the carpets were approximately 8 years old and that at the end of the tenancy there were oil stains on the carpets from the motorcycles that were brought into the rental unit. The tenants testified that the carpets were in poor condition at the beginning of the tenancy and denied that the motorcycles caused any damage. Although the landlord has not provided condition inspection reports or photographs, I find that it is likely that the motorcycles caused damage to the carpets. Residential Tenancy Policy Guideline #37 lists the useful life of things purchased and identifies 10 years as the useful life of a carpet. I find that the tenants deprived the landlord of two years, or 1/5 of the useful life of the carpets and find that the landlord is entitled to recover \$517.39, or 1/5 of the cost of replacing the carpets. I award the landlord \$517.39.
- e. **Locks.** The landlord seeks \$117.32 as the cost of replacing the locks at the end of the tenancy. One of the tenants acknowledged that his keys had not yet been returned to the landlord. I find that the landlord acted reasonably in changing the locks for the new tenant and find that the tenants must bear the cost of the locks. I award the landlord \$117.32.
- f. **Oven element.** The landlord seeks \$40.60 as the cost of replacing a stove element. The parties agreed that at some point during the tenancy the

landlord gave a cheque for this amount to one of the tenants to allow him to change the element. The tenant testified that while he ordered the new element, he did not pick it up and did not cash the landlord's cheque. The landlord was unable to confirm whether the cheque had been cashed. I find that the cost of the element must be borne by the landlord. The claim is dismissed with leave to reapply in the event that the tenant negotiates the landlord's cheque.

- g. **Lawn supplies.** The landlord seeks \$18.18 as the cost of purchasing bulbs and fertilizer for the lawn. The landlord testified that the tenants were responsible to care for the lawn under the terms of the tenancy agreement and failed to properly water the lawn, which resulted in the lawn becoming unhealthy. The tenants denied having neglected the lawn and testified that they watered and otherwise cared for the lawn during the tenancy. In the absence of a report showing the condition of the lawn at the beginning of the tenancy or photographs or a report showing the condition at the end, I find that the landlord has not proven that the lawn was damaged or that the damage did not pre-date the tenancy and accordingly I dismiss the landlord's claim.
- h. **Tap repair.** The landlord claims \$32.30 as the cost of replacing washers and repairing faucets in the rental unit because of leaks. The tenancy agreement provides that "the tenant will be responsible for the replacement of all light bulbs, tap washers and fuses of what so ever nature within the house related to its' [sic] premises, when necessary." The landlord testified that because the tenants allowed a number of other people to stay in the rental unit or use the taps, there was an unreasonable amount of wear and tear on the taps, resulting in leaks. The tenants argued that the landlord should bear the responsibility of replacing washers and repairing leaks. Section 32(4) of the Act provides that tenants are not required to make repairs for reasonable wear and tear. Section 5(1) of the Act provides that landlords and tenants cannot avoid or contract out of the Act. Regardless of the tenancy agreement's requirement that the tenants replace tap washers, I find that the

landlord had an obligation to maintain the rental unit and make repairs required as a result of reasonable wear and tear. I find that the landlord has not proven that the washers required replacement because the tenants used them in a manner that is beyond the reasonable wear and tear one would expect over the course of a tenancy. Accordingly I find that the landlord's claim must be dismissed.

- i. **Window replacement.** The landlord claims \$466.62 as the cost of replacing three broken windows in the rental unit. The tenants acknowledged that two of the three windows were broken during the tenancy but claim that they have no knowledge of the third broken window. The tenants suggested that whoever stayed in the rental unit after G.B. moved out should be held responsible for the third broken window. I am satisfied that three windows were broken, primarily because there is no benefit to the landlord in replacing windows which are not broken. I find that the tenants are responsible for the actions of those who stayed in the rental unit after G.B. vacated as I specifically find that G.B. permitted those persons to access the unit during his tenancy and failed to ensure that they did not have access after he vacated. I find the landlord is entitled to recover the \$466.62 paid for window replacement and I award the landlord that sum.

- [5] **Unpaid rent and utilities.** The landlord seeks \$560.00 in unpaid rent for August and \$198.58 in unpaid utilities. The tenants acknowledged having only paid \$540.00 of the rent due in August and took the position that because the landlord served them with a 10-day notice to end tenancy and because they moved pursuant to that notice, the full amount of rent was not payable for that month. I find that the tenants were obligated to pay \$1,100.00 on the first day of August. Their failure to pay rent gave the landlord the right to end their tenancy, but did not relieve them of their obligation to pay the rent under the terms of the agreement. I find that the landlord is entitled to recover \$560.00 in unpaid rent for August. The tenancy agreement provides that the tenants are responsible to pay 1/3 of the utilities. The landlord provided a copy of a utility bill for the billing period of July 1, 2008 – August 25, 2008 which showed that \$595.75 was due. I find that the

tenants are responsible for 1/3, or \$198.58, of the utility bill. I award the landlord \$758.58 which represents \$560.00 in unpaid rent and \$198.58 in unpaid utilities.

- [6] **Disruption costs.** The landlord seeks to recover \$200.00 paid to subsequent tenants to compensate them for disruption. The landlord testified that new tenants moved into the rental unit in September 2008 and because all the required repairs could not be completed prior to their move-in date, the landlord paid them \$200.00 to compensate them for the disruption they would experience as a result of repairs being completed and particularly, for the installation of carpets. I have already found that the landlord had to replace the carpets due to the stains caused by the motorcycles and find that the landlord is entitled to recover the cost of compensating subsequent tenants for the disruption of installing new carpets. I award the landlord \$200.00.
- [7] **Bounced cheque fee.** The landlord seeks \$25.00 as a “bounced cheque fee.” The tenancy agreement provides that a \$25.00 fee will be charged for cheques that bounce. The landlord testified that the fee is payable because the tenants purported to pay their rent with cheques that were unsigned and therefore non-negotiable. I find that as the cheques were not negotiated, they cannot be considered to have bounced and accordingly the fee is not payable. This claim is dismissed.
- [8] **Food and travel costs.** The landlord seeks to recover the costs associated with travelling from Vancouver to Kamloops to attend to the eviction of the tenants and the clean-up and repair of the rental unit. In support of this claim, the landlord submitted fuel and toll receipts as well as receipts for food, newspapers and lotto tickets. The landlord is entitled to recover the cost of repairs and clean-up, but when mitigating his losses must make an effort to keep those costs at a reasonable level. The landlord chose to operate this business at a considerable distance from his home and I find that the tenants should not be made to bear the cost associated with travel from the landlord’s home to the rental unit. Further, it was open to the landlord to hire local agents to complete whatever work was required, which would have saved him a significant amount in travel costs. The tenants would not have been responsible to pay for food, lotto tickets or newspapers for an

agent in any event. The landlord's claim is dismissed.

[9] **Door replacement.** The parties agreed that the landlord was entitled to recover \$250.00 as the cost of replacing the door of the master bedroom. I award the landlord \$250.00.

[10] **Filing fee.** The landlord seeks to recover the \$100.00 paid to bring this application as well as \$50.00 paid to bring a previous application in which he sought to end the tenancy, the hearing for that application having been heard on September 2, 2008. In reviewing the decision and order which arose from the previous decision, I note that while the decision does not address the filing fee, the order included an order that the tenants pay the cost of the application. I find that the landlord has already been awarded the cost of the previous filing fee and dismiss that part of the landlord's claim. The landlord has been only partly successful in his application and I find that the landlord is entitled to recover one half of the fee paid to bring this application and award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Furniture & garbage removal	\$ 523.90
Cleaning	\$ 182.83
Repairs	\$1,106.78
Unpaid rent and utilities	\$ 758.58
Disruption costs	\$ 200.00
Door replacement	\$ 250.00
Filing fee	\$ 50.00
Total:	\$3,072.09

The landlord has established a claim for \$3,072.09. Although the landlord sought to withdraw his claim to retain the security deposit, under section 72 I have the authority to apply the security deposit against any amount payable by a tenant to a landlord. I find that the landlord was not entitled to retain any part of the security deposit without the written agreement of the previous tenant and accordingly find that the security deposit collected by the landlord at that time continued with D.B. to serve as a security deposit with the new tenancy established in June 2008. I find that the landlord has a security

deposit of \$250.00 and I order that the landlord retain the deposit and interest of \$254.01, the interest having been calculated from November 16, 2007 to the date of this judgment, in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,818.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated December 10, 2008.