



Dispute Resolution Services

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

Decision

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

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for damages to the rental unit and for loss or damage under the Act or tenancy agreement as well as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

At the beginning of the hearing, the Tenant sought an adjournment so that she could serve the Landlord with her evidence. The Tenant claimed that she had been very ill in the 2 week period prior to the hearing. The Landlord objected to an adjournment on the grounds that the Tenant had been served with the application approximately 2 months ago and therefore had ample time to serve her evidence. In the circumstances, I agree with the Landlord and the Tenant's request for an adjournment was dismissed.

Issue(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This tenancy started on November 1, 2007 and ended on December 22, 2008 when the Tenant moved out. Rent was \$750.00 per month. The Tenant paid a security deposit of \$375.00 by way of 4 installments with the last payment being on April 1, 2008.

The Landlord claimed that at the end of the tenancy the Tenant left damages in the rental unit which included a cracked door frame and a crack in the living room wall. The Landlord also claimed that a garbage can provided to the Tenant at the beginning of the tenancy was missing and had to be replaced by her.

The Tenant agreed to compensate the Landlord for \$135.00 as the cost of carpet cleaning and \$50.00 for the cost to reinstall and reprogram a satellite dish. The Tenant disputed that she was responsible for the other damages alleged by the Landlord. The

Parties agree that at the request of the Tenant and another tenant in an adjoining unit, the door in question was left open until the tenants had an argument. The Tenant claimed she closed the door but the other tenant kicked it causing the damage. The Landlord claimed that both tenants blamed the other and that there was no way for her to tell who caused the damage so she sought ½ of the cost of the repair from each tenant. The Tenant argued that as a result of the door being kicked by the other tenant, the latch was bent on her side of the door.

The Tenant also claimed that she showed the pictures of the crack in the living room wall to 2 contractors who claimed it was the result of the house settling. The Tenant claimed that the house was old and that if it was caused by an impact as the Landlord argued, there would have been an indent or chip in the paint which was not evident. The Landlord argued that if the crack was the result of settling, there would have been other cracks evident in the rental unit but there were not. The Landlord further argued that the crack ran along a drywall seam which suggested something like a sofa had banged into it. The Landlord said she found other damages to the walls that the Tenant had tried to repair but had not done correctly.

The Tenant denied that the Landlord provided her with a garbage can and claimed that she shared her neighbor's garbage can until they began arguing and thereafter, she kept her garbage in a bag until garbage collection day when she put it out. The Tenant claimed that her neighbor's garbage can had been destroyed by a bear and had to be thrown out.

Analysis

As there is no dispute regarding the Landlord's claim for compensation for carpet cleaning and the satellite re-connection fee, I find that the Landlord is entitled to recover those amounts.

The onus is on the Landlord to show that the Tenant was responsible for the alleged damages. The Tenant argued that the Landlord did not provide photographs of the damaged door frame because it would have shown the damage was on the other tenant's side of the door. The Tenant also claimed that she had 2 witnesses present with her at the time the other tenant damaged the door and that the Landlord's handyman also viewed the damaged frame and agreed it was on the other tenant's side. In the circumstances, I find that the Landlord has not shown that the Tenant was responsible for damaging the door frame and that part of her application is dismissed.

With respect to the crack in the living room wall, I do not place a lot of weight on the Tenant's hearsay evidence of what 2 contractors told her. I agree with the Landlord that it is they based their opinion, in part, on facts that the Tenant may have said to them. However, given the contradictory evidence of the Parties and in the absence of any

further evidence to resolve the contradiction, I find that the Landlord has not shown that the crack was due to some act or neglect of the Tenant. Consequently, this part of the Landlord's application is dismissed.

With respect to the garbage can, I also find there is contradictory evidence that cannot be resolved and as a result, I find there is insufficient evidence that the Tenant is responsible for this expense. Consequently, this part of the Landlord's application is dismissed.

The Landlord adduced no evidence of unpaid rent or a loss of rental income and as a result, that part of her claim is dismissed. As the Landlord has been successful in recovering part of her claims, I find she is entitled to recover $\frac{1}{2}$ of her filing fee for this proceeding or \$25.00. I order the Landlord to keep \$210.00 of the Tenant's security deposit and to return the balance to the Tenant as follows:

Security Deposit:	\$375.00
Accrued Interest:	<u>\$4.23</u>
Subtotal:	\$379.23
Less: Satellite dish fee:	\$50.00
Carpet Cleaning:	\$135.00
Filing fee:	<u>\$25.00</u>
Total due:	\$169.23

Conclusion

A Monetary Order in the amount of **\$169.23** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be enforced in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.