



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

2

DECISION

Dispute Codes:

MND

MNR

MNSD

FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence provided by the parties prior to the Hearing. Both parties gave affirmed evidence and this Hearing proceeded on its merits.

Issue(s) to be Decided

This is the Landlords’ application for a monetary order for unpaid rent and damage to the rental property, to keep all of the security deposit, and to recover the filing fee from the Tenant for the cost of the application.

Background and Evidence

Service

The Landlord testified that he mailed the Tenant the Application of Dispute Resolution and Notice of Hearing package, by registered mail, on February 4, 2009, to the Tenant's new residential address.

Landlord's testimony and evidence

The rental unit is located in a strata property. Monthly rent for the rental unit is \$1275.00 payable on the first day of the month. The Tenant paid a security deposit to the Landlord in the amount of \$637.50 on September 1, 2007. There was no move-in or move-out inspection done on the rental unit.

The Landlord testified that the Tenant's rent cheque for January, 2009, was returned to the Landlord, "insufficient funds" on January 7, 2009. The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord and the Tenant came to an agreement that she could stay if she paid \$640.00 immediately and the remaining \$635.00 by January 22, 2009. The Tenant did not pay the \$635.00 owing for January rent and moved out of the rental unit. The Landlord applied for a monetary order in the amount of \$635.00 for unpaid rent.

The Landlord testified that the Strata Corporation levied fines totaling \$285.00 against the Landlord. The fines were issued after warning letters were provided to the Tenant and the Landlord. The Landlord provided copies of the following letters from the property managers of the strata corporation:

DATE	TO	REGARDING
Aug 22/08	Tenant, copy to Landlord	Noise/Nuisance fine warning
Oct 1/08	Tenant, copy to Landlord	Notice of \$200.00 fine
Oct 19/08	Landlord	Request for payment of \$284.00
Oct 20/08	Landlord, copy to Tenant	Cigarette butts from Tenant's unit
Nov 6/08	Landlord, copy to Tenant	Cigarette butts fine warning

The Landlord testified that a visiting friend of the Tenant's son left his muddy bicycle in the common hallway about 5 feet away from the Tenant's door. The marks left by the bicycle stained the carpet. The Landlord testified that there was a witness, who lives across the hall from the Tenant, who stated that she saw the Landlord's son's friend park his bicycle in the hallway. The Landlord stated that the strata corporation had the carpet cleaned and requested payment for the carpet cleaning from the Landlord, in the amount of \$84.00. The Landlord testified that he paid the strata corporation \$84.00 for removing the stain from the carpet and \$200.00 for the fine levied on October 1, 2008. The Landlord provided evidence that he had paid the fines. The Landlord applied for recovery of \$284.00 from the Tenant.

The Landlord testified that the Tenant's son broke the door to his bedroom. The Landlord stated that the door handle had malfunctioned, and the Tenant's son pushed in the door, causing the wood around the handle to crack. The Landlord stated that the Tenant replaced the handle, and verbally agreed that the Landlord could take the cost of replacing the door from the security deposit. The Landlord stated that he misplaced the receipt for the replacement door, but that it was \$139.00. The Landlord applied for recovery of the amount he paid to replace the door from the Tenant.

The Landlord applied for recovery of the \$50.00 filing fee for the cost of the application from the Tenant.

Tenant's testimony and evidence

The Tenant testified that she vacated the rental unit on January 22, 2009. The Tenant stated that she paid only \$640.00 towards rent for the month of January, and had asked the Landlord if she could apply the security deposit towards the \$635.00 that remained owing, but that they did not come to an agreement.

The Tenant testified that she did not believe the \$284.00 in fines levied by the strata corporation to the Landlord were her responsibility. She stated that there was no proof

that her son's friend had stained the carpet in the common hallway. The Tenant denied that her son was smoking in his room and discarding his cigarette butts onto the neighbour's balconies below. The Tenant denied that her son was throwing debris or vomiting from his bedroom window to the balconies below. The Tenant stated that she spoke to her son about yelling and making noise, but that her son did not smoke and the cigarette butts did not come from her unit. The Tenant testified that she was unaware of the strata corporation's fine structure until the Landlord provided her with a copy of the strata's bylaws on October 10, 2008. The Tenant stated that she thought the maximum fine was \$50.00. The Tenant stated that she did receive the letters from the strata corporation dated August 22, 2008; October 1, 2008; October 20, 2008; and November 6, 2008, but that she did not believe she was responsible to pay the fines for the reasons stated.

The Tenant testified that her son did not break the door to his bedroom. The Tenant stated that the door handle did not work and that she had the handle replaced the next day. The Tenant testified that her son could not gain access to his room and spent the night on the couch until a replacement handle could be installed. The Tenant testified that the Landlord reimbursed her for the cost of the replacement door handle.

Analysis

The Landlord could not provide proof of cost to replace the Tenant's son's bedroom door. There was no move-in inspection done to verify the condition of the door when the Tenant moved into the rental unit. The Landlord's claim for damages to the door is dismissed without leave to reapply.

The Tenant did not pay rent in full for the month of January, 2009. The Landlord's application for unpaid rent in the amount of \$635.00 is granted.

The Landlord provided copies of letters from the strata corporation with respect to noise and nuisance complaints from other tenants in the rental property. The Tenant received copies of these letters. Included in the letters were details regarding the dates of the incidents and the witnesses to the incidents. Included in the letter of August 22, 2008,

is a description of the infringed bylaw and the statement, "the strata corporation may fine an owner or tenant a maximum of \$200.00 for each contravention of a bylaw". The Tenant stated that she received a copy of this letter in August, 2008. The Landlord's application is granted for recovery of the \$200.00 he paid in strata fines. With respect to the Landlord's application for recovery of the \$84.00 for carpet cleaning is dismissed without leave to re-apply, as he failed to provide proof that the stain was caused by the Tenant's son. There was no witness to give oral testimony, and no written evidence that the stain was caused by the Tenant's son or the Tenant's son's friend.

The Landlord has been largely successful in his application and is entitled to recover the filing fee for the cost of his application from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may apply the security deposit, together with accrued interest, in partial satisfaction of his monetary claim.

The Landlord has established a monetary order in the amount of \$234.68, calculated as follows:

Unpaid rent for January, 2009	\$635.00
Recovery of strata fines for nuisance and noise	\$200.00
Recovery of filing fee	\$50.00
Less security deposit and accrued interest of \$12.82	<u><\$650.32></u>
TOTAL	\$234.68

Conclusion

I grant the Landlord a monetary order under section 67 of the Act for \$234.68. This order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

April 17, 2009
