



Dispute Resolution Services

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

Decision

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

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid utilities, for compensation for loss or damage under the Act or tenancy agreement as well as to keep all or part of a security deposit and to recover the filing fee for this proceeding. The Tenant applied for a Monetary Order for compensation for loss or damage under the Act or tenancy agreement as well as to have a security deposit returned and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are there arrears of utilities and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so, how much?
3. Is the Tenant entitled to compensation for damages and if so, how much?
4. Are the Landlords entitled to keep all or part of a security deposit?

Background and Evidence

This tenancy started on February 1, 2003 and ended on January 15, 2009. Rent was \$700.00 per month payable on the 1st day of each month plus 50% of the utilities for the rental property. The Tenant paid a security deposit of \$350.00 at the beginning of the tenancy.

The Landlords gave the Tenant a written notice on December 9, 2008 which advised him that the Landlords wanted him to vacate by March 15, 2009 so the Landlords could use the rental unit. The Landlords advised the Tenant that if he moved out by January 15, 2009, they would refund him ½ of the rent he paid for January, 2009. The Tenant gave the Landlords a written notice on January 4 and 5, 2009 that he would move out of the rental unit on January 15, 2009 and wanted his one month's compensation in addition to ½ of January's rent and his security deposit.

The Tenant claimed that he met with the Landlords on January 15, 2009 and they were satisfied with the condition of the rental unit and said nothing about damages or cleaning being required until they filed their application in this matter. The Landlords

claim they told the Tenant's spouse that more cleaning was required but she told them they should do it themselves. The Landlords said they had two witnesses view the rental unit the day the Tenant moved out and took pictures of it. A condition inspection report was not completed either on move in or when the Tenant moved out. The Landlords claim they had to hire someone to do general cleaning, carpet cleaning and repair a hole in the wall.

The Tenant disputed that additional cleaning was required. The Tenant admitted to putting a dent in a hallway wall when moving a bed but denied that it was a hole as shown in the Landlord's photographs. The Tenant said he gave his forwarding address in writing to the Landlords in person on January 15, 2009 and did not agree to them keeping his security deposit.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date they receive the Tenant's forwarding address in writing to either return the security deposit or to apply for dispute resolution to make a claim against it. If a Landlord does not do either of these things within 15 days and does not have the Tenant's written authorization to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord must pay the Tenant double the amount of his security deposit.

In this case, I find the Landlords received the Tenant's forwarding address in writing on January 15, 2009 and therefore had until **January 30, 2009** to either apply for dispute resolution or return the security deposit. The Landlords applied for dispute resolution on January 29, 2009 and are therefore only liable to return the original amount of the security deposit (plus accrued interest).

Section 49 of the Act says that a Landlord may end a tenancy by giving a Tenant a Two Month Notice to End Tenancy. Section 52 of the Act says that a Notice to End Tenancy when given by a Landlord **must be in the approved form**. I find that the Notice given by the Landlords to the Tenant on December 9, 2008 was not on the approved form and is therefore invalid and of no effect. Section 51 of the Act says that a Landlord must pay a Tenant compensation equivalent to one month's rent where a notice under s. 49 has been given to the Tenant. As the Notice given to the Tenant was not a valid notice under s. 49, I find that the Tenant is not entitled to compensation of \$700.00.

However, I find that the Parties agreed the tenancy would end on January 15, 2009 and as a result, I find that the Tenant is entitled to recover one-half of the rent he paid for January or \$350.00.

The parties agreed there were outstanding utilities to January 15, 2009. I find that the Tenant's share of the gas bill is **\$173.96** ($50\% \times \$392.81 = \$196.41 / 35 \text{ days} \times 31 \text{ days}$

= \$173.96) and the Tenant's share of the hydro bill is **\$162.71** ($50\% \times 348.25 = \174.13 / 61 days x 57 days = \$162.71).

Section 37 of the Act says that at the end of a tenancy the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 says that after a tenancy of about a year, a Tenant will be expected to clean the carpets. Consequently, I find that the Landlords are entitled to recover carpet cleaning expenses of \$84.00.

The Landlords admitted they did not do a condition inspection report but relied on photographs taken after the Tenant moved out and the evidence of a witness who also saw the rental unit after the Tenant moved out as evidence of the condition of the rental unit at the end of the tenancy. The Tenants did not dispute the areas behind the stove and refrigerator may not have been cleaned but argued they could not pull them out. I give the Landlord's photographs little weight given that they were taken after the Tenant moved out. RTB Policy Guideline #1 also says that a Tenant is not responsible for cleaning behind appliances unless they are pulled out by the Landlord. Given also the contradictory evidence of the parties, I find there is insufficient evidence to show that the Tenants left the rest of the rental unit unclean and that part of their claim is dismissed.

The Tenant admitted to bumping a wall while he was moving out but denied that he created a hole in the wall as alleged by the Landlords. In the circumstances, I find that the Landlords are entitled to \$80.00 as compensation for that damage.

In summary, I find that the Tenant is entitled to the following compensation:

<u>Security deposit:</u>	\$350.00
Accrued interest:	\$12.39
½ January 2009 rent:	<u>\$350.00</u>
<u>Total:</u>	\$712.39

And the Landlords are entitled to the following compensation:

Unpaid Hydro:	\$162.71
Unpaid Gas:	\$173.96
Carpet Cleaning:	\$84.00
Wall Repair:	<u>\$80.00</u>
Total:	\$500.67

Sections 24(2) and 36(2) of the Act state that a Landlord's right to claim against a security deposit for damages is extinguished if the Landlord does not do a move in or a move out condition inspection report. Sections 62(3) and 72 of the Act, however, permit the director to set off awards to the Parties where it is necessary to give effect to the rights and obligations of the parties. Consequently, after setting off the amount owed by

the Tenant to the Landlord, I find that the Tenant is entitled to a monetary order as follows:

<u>Amount owed to Tenant:</u>	\$712.39
Amount owed to Landlords:	<u>(\$500.67)</u>
<u>Total Owing to Tenant:</u>	\$211.72

As each of the Parties has been partially successful, I make no award as to reimbursement of the filing fee.

Conclusion

A Monetary Order in the amount of **\$211.72** has been issued to the Tenant and a copy of the Order must be served on the Landlords. If the amount of the Order is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.