



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent and utilities, for loss of rental income, for compensation for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

Issues(s) to be Decided

1. Are there unpaid rent and utilities and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on September 1, 2008 and was to expire on September 1, 2009 but ended on February 14, 2009 when the Tenants moved the last of their belongings. Rent was \$1,500.00 per month plus gas (or heat). The Tenants paid a security deposit of \$750.00 at the beginning of the tenancy.

The Landlord said that the Tenants gave him written notice on February 4, 2009 that they were moving out effective February 14, 2009. The Landlord said he met the Tenants on February 16th and asked them to set up a time to do a move out condition inspection but they did not want to do one at that time. The Landlord said the Tenants gave him a forwarding address which he claimed was not a valid address because mail he sent to that address was returned for that reason. In any event, the Landlord said he never heard from the Tenants again and on February 19th he got their current address from one of the Tenant's employers.

The Landlords said the Tenants did not pay their rent for February, 2009 and left an outstanding balance on the gas account of \$734.00 (which includes late charges). The Landlords also claim that they tried to re-rent the rental unit for March 1, 2009 but were unable to do so for that month or for April, 2009 because prospective tenants had concerns about the condition of the back yard. The Tenants admit they did not pay their rent for February, 2009 and probably had arrears on the gas account but argued that the amount claimed by the Landlords might not reflect payments made by them.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord also claims the rental unit was in good condition at the beginning of the tenancy and in support provided a document entitled "Rental Unit Walk Through" dated September 1, 2008. The Landlord said that the Tenants left the rental unit damaged and unclean at the end of the tenancy. In particular, the Landlord claims the Tenants damaged hardwood floors throughout the rental unit beyond reasonable wear and tear such that they will have to be sanded and refinished. The Landlord admitted that the floors were 40 years old and had some wear and tear but claimed that at the end of the tenancy there were many scratches from ground in dirt, varnish removed from cat urine and in one spot cigarette burns. The Tenants admitted that the floors were in good condition at the beginning of the tenancy and that they would likely have to be refinished but argued that some of the damages shown in the Landlord's photographs (ie. a sanded area) were not caused by them.

The Landlord said that the Tenants damaged a 3 year old dryer which was beyond repair and had to be replaced. The Tenants argued that the dryer did not work properly throughout the tenancy and that they advised the Landlord about it. The Tenants admitted that they told the Landlord during the tenancy that they would arrange to have someone look at the dryer but never did. The Landlord said the Tenants also damaged a 3 year old microwave oven by leaving a metal rack in it which resulted in a number of burn holes to the liner. The Landlord said the microwave could not be repaired and had to be replaced. The Tenants said they did not know about any damages to the microwave.

The Landlord claimed that the Tenants cracked a window and that it had to be replaced. The Tenants claimed the window was broken at the beginning of the tenancy. The Landlord also claimed that the Tenants changed the front door locks and did not provide him with those keys or keys to the back sundeck entrance at the end of the tenancy. The Tenants claim they returned all of the keys to the Landlord at the end of the tenancy. The Landlord said the Tenants also damaged a sink in the master bedroom bathroom with cigarette burn marks that could not be removed. The Tenants denied that there were any burn marks in the sink and claimed that it just needed cleaning.

The Landlord said the Tenants' dogs damaged the back yard by digging holes, destroying the lattice under the sundeck and strewing various items around. He also claimed that the Tenants left many cigarette butts in the backyard. The Landlord sought to recover the cost of topsoil and grass seed to repair the yard as well as a \$15.00 land fill fee to dispose of garbage. The Tenants did not dispute that the Landlord's claim for soil and grass seed but claimed they the articles the Landlord claimed to have disposed of were not theirs but were there at the beginning of the tenancy.

The Landlord claimed that the Tenants damaged the top of a kitchen cabinet door by the stove by placing something hot on it which the Tenants denied. The Landlord also

claimed that the Tenants broke a floor vent and that a toilet seat was written on with something blue which the Tenants also denied. The Landlord said the Tenants did not replace burned out light bulbs, however, the Tenants claimed they simply loosened certain bulbs where the lights were too bright.

The Tenants argued that they were not given a reasonable opportunity to do a condition inspection so that they could determine the damages for themselves and try to remedy any problems. The Landlord argued that the Tenants were given ample opportunity to do a condition inspection or to address damages but instead abandoned the rental unit leaving their 2 cats behind.

Analysis

I find that there are arrears of rent for February 1-14, 2009 in the amount of **\$750.00**. Section 45(2) of the Act says that a Tenant of a fixed term tenancy cannot end a tenancy earlier than the day set out in the tenancy agreement as the last day of the fixed term. If a Tenant ends the tenancy earlier they may be liable for a loss of rental income that the Landlord suffers as a result. This is subject to a Landlord's obligation under section 7(2) of the Act to do whatever is reasonable to minimize his losses. I find that the Landlord did try to clean up and re-rent the rental unit as soon as possible and is entitled to a loss of rental income for February 15-28, 2009 and March and April, 2009 in the total amount of **\$3,750.00**.

I accept the Landlord's evidence that payment made by the Tenants were applied to the gas account in the same month that each payment was made. The Landlord said the Tenants got copies of the utility bills each month. The Landlord also claimed that as of November, 2008, the Tenants started falling behind in their payments and the unpaid balances were being carried forward. The Landlord said the invoice he provided at the hearing carried forward the unpaid balance. In the absence of any evidence to the contrary by the Tenants (who had the invoices and receipts for payment), I find that there are arrears of the gas account in the amount of **\$734.00**.

Section 23 of the Act says that a Landlord must complete a condition inspection report at the beginning of the tenancy. Section 21 of the Regulations to the Act says that a condition inspection report completed in accordance with this part is evidence of the state of repair and condition of the rental unit at the beginning of the tenancy unless there is a preponderance of evidence to the contrary. Section 20 of the Regulations to the Act sets out what must be contained in a condition inspection report. I find that the Landlord's "Rental Unit Walk Through" is not a valid condition inspection report notably because it lacks the details required under s. 20 of the Regulations to the Act. In particular, it simply states "the house is in great condition and very clean but missing some corner baseboards and accent mouldings." Consequently, I cannot give a lot of

weight to this report because it does not give sufficient details about the condition of each room in the rental unit at the beginning of the tenancy.

Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of the tenancy even if the Tenant has abandoned the rental unit. Section 17 of the Regulations to the Act says a Landlord must offer a Tenant 2 opportunities to do a move out condition inspection with the second occasion being by way of a written notice called a "Final Notice to Schedule a Condition Inspection." In this case, the Landlord did not do a condition inspection report at the end of the tenancy but instead took photographs of some of the alleged damages and provided estimates of others.

Section 37 of the Act says that at the end of a tenancy, the Tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. The Tenants admit that they caused some of the damages to the hard wood floor but suggested that other damages shown in the Landlord's photographs were not caused by them. The Landlord claimed that the spots disputed by the Tenants were areas where their cats had urinated or defecated on the floors such that it had seeped into the wood, stripping the verathane and had to be sanded out. Given the evidence of both parties, I find that the Tenants damaged the floors and that it was not reasonable wear and tear. Consequently, I find that the Landlords are entitled to recover the cost to repair the floor at **\$2,467.50** (or \$2,350.00 + GST).

I find that there is insufficient evidence that the Tenants are responsible for damaging the dryer. The Tenants claim that the dryer was not working properly throughout the tenancy. Section 32 of the Act requires a Landlord to repair and maintain a rental property unless the damage in question is caused by the Tenant. There was no evidence that an act or neglect of the Tenants during the tenancy caused the dryer to not work properly. Given that the pre-existing problem with the dryer was known to the Landlord during the tenancy, I find he had a responsibility to repair the dryer but did not take steps to repair it. Consequently, that part of the Landlord's claim is dismissed.

I find on a balance of probabilities that the Tenants were responsible for damaging the microwave oven. The Landlord claimed that the microwave was only 3 years old and was undamaged at the end of the previous tenancy. In the absence of any other explanation, I accept the Landlord's evidence that the burns to the liner in question likely resulted from leaving a metal rack in the oven. Consequently I find that the Tenants are responsible for the replacement cost of this item and award the Landlord the amount of **\$1,119.99**.

With respect to the landfill fee, I find on the basis of the photographs of the garbage left inside the rental unit and outside in the yard that most (if not all) of this expense was

incurred to dispose of the Tenants' items. Consequently, I award the Landlord **\$14.00** for this expense.

The Landlord bears the onus of proving that the window, sink, floor vent, toilet seat and light bulbs were damaged during the tenancy by the Tenants and not repaired or replaced and that the Tenants did not return the keys. In the case of the window, the Tenants claimed it was damaged at the beginning of the tenancy. In the case of the sink, floor vent, toilet seat and light bulbs, the Tenants denied there were damages as alleged. In the case of the keys, the Tenants claim that all of them were returned. As the Landlord's claims are directly contradicted by the Tenants and in the absence of any corroborating evidence (such as a properly detailed condition inspection report), I find that there is insufficient evidence to support these expenses and these parts of the Landlord's claim is dismissed.

I do not give a lot of weight to the Tenants' argument that they were not given a reasonable opportunity to do a condition inspection report to assess damages or to remedy any condition issues. In particular, I find that the Tenants did not return to the rental unit after February 16, 2009 or contact the Landlords as they said they would to pay the rent arrears or even to retrieve their cats. Consequently, I find that the Tenants did not make any reasonable attempts to participate in a move out condition inspection, to provide the Landlord with a proper forwarding address or to remedy any damages at the end of the tenancy.

As the Landlord has been successful in this matter, he is entitled to recover his filing fee for this proceeding. I order the Landlord pursuant to s. 38(4), 62(3) and 72 of the Act to keep the Tenants' security deposit. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid rent February, 2009:	\$750.00
Loss of rent February, 2009:	\$750.00
Unpaid Gas bill:	\$734.00
Loss of rent March, 2009:	\$1,500.00
Loss of rent April, 2009:	\$1,500.00
Repair of hardwood floor:	\$2,467.50
Microwave:	\$1,119.99
Landfill fee:	\$14.00
Filing fee:	<u>\$100.00</u>
Subtotal:	\$8,935.49
Less: Security deposit:	(\$750.00)
Accrued interest:	<u>(\$3.75)</u>
Balance owing:	\$8,181.74



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

A monetary order in the amount of **\$8,181.74** has been issued to the Landlord and a copy of it must be served on the Tenants. If the Tenants do not pay the amount, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: May 06, 2009.

Dispute Resolution Officer