



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent and utilities, for compensation for damages to the rental unit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlords also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on February 1, 2008 and ended on July 1, 2008. Rent was \$1,600.00 per month plus 2/3 of the utilities for the rental property. The Tenant paid a security deposit of \$800.00 at the beginning of the tenancy.

On May 30, 2008, the Tenant gave the Landlords written notice that she was ending the tenancy on July 1, 2008. The Landlords said they arranged to do a move out condition inspection early on July 1, 2008 but the Tenant said she needed more time. The Landlords advised the Tenant that if she did not move out on July 1, 2008, she would have to pay additional rent. The Landlords said they re-scheduled the move out inspection for 6:00 pm on July 1, 2008 but when they went to the rental unit the Tenant was not there and had left the keys in the mail box. The Landlords posted a Final Opportunity to Schedule a Condition Inspection on the door of the Tenant's new residence across the street with a new date of July 2nd. The Landlords said the Tenant did not attend the move out inspection on July 2nd but did sent them an e-mail advising them that they could keep her security deposit in payment of any cleaning and repairs.

The Landlords claim the Tenant left moving boxes, garbage, 3 bags of belongings and an old sofa behind that had to be removed. The Landlords claimed that it took them 10 hours to prepare the rental unit so that it could be professionally cleaned and carpet cleaned. The Landlords also claimed that they had to replace 2 bathroom doors and 1

Residential Tenancy Branch
Ministry of Housing and Social Development

bedroom door that had been deeply scratched by a dog and 1 bi-fold closet door that had stickers on it which when removed peeled off the varnish. The Landlords claimed the doors were approximately 26 years old but were in good condition at the beginning of the tenancy. The Landlords also claimed that a living room window screen had fallen out during the tenancy and the frame was bent. The Landlords said that they also incurred expenses to replace door stops and repair chips in the drywall.

The Tenant admitted that there were outstanding utilities in the amount of \$170.83. However, the Tenant claimed that she did not have a reasonable opportunity to do the cleaning and make the repairs to the rental unit. The Tenant claimed that she had people lined up to help her move, clean and make the repairs, however, her efforts were hampered by the actions of the downstairs tenant (with whom she had many problems throughout the tenancy). The Tenant said that she started cleaning 3 days before the end of the tenancy but the downstairs tenant continued to disconnect the vacu-flow and air conditioner. On July 1, 2008, the Tenant said the downstairs tenant confronted the people helping her to move and started verbally assaulting and threatening them and as a result they left after about an hour and a half.

The Tenant said she realized she was not going to be able to get the cleaning done by July 1, 2008 and she did not want to go back to the rental unit and have to deal with the downstairs tenant so she advised the Landlords they could keep her security deposit. The Tenant also said that she did not feel she should have to pay the Landlord rent for additional days just to clean especially when the rental unit had not yet been re-rented. The Tenant claimed that she did not feel the Landlords were treating her fairly given that they had done nothing about the treatment she had endured by the downstairs tenant.

Tenant admitted that a dog she had looked after had scratched one of the doors but claimed that its owner, a person who worked at Rona, had advised her that the doors could be sanded and refinished. Consequently, the Tenant argued that the cost to replace the doors was unreasonable. The Tenant also argued that the stickers on the bi-fold door could be removed with a solvent without removing the varnish finish. The Tenant said she did not know when the living room screen was damaged as the Landlords had put it back in place when it fell out during the tenancy and said nothing about it being bent. The Tenant also claimed that a sofa she left in the rental unit had been left "for the rental unit" by a previous tenant and therefore she was not responsible for moving it.

The Landlords claimed that they tried on many occasions to resolve the problems between the two sets of tenants in the rental property. The Landlords also claimed that they explored having the doors refinished before replacing them but that they were too badly scratched and could not be restored. The Landlords said they would not have

allowed the sofa to have stayed in the rental unit had it not been that Tenant agreed to take the sofa from the previous tenant.

Analysis

The undisputed evidence is that there are unpaid utilities of **\$170.83** and I find that the Landlords are entitled to recover that amount.

Section 45 of the Act says that a Tenant of a periodic tenancy must give a Landlord one clear month's notice in writing that they are ending the tenancy. The only exception to this rule is if the Tenant gives the Landlord written notice that there has been a material breach of the tenancy agreement and the Landlord fails to rectify the situation within a reasonable period of time. There was no evidence in this case that the Tenant gave the Landlords written notice that they were in breach of a material term of the tenancy agreement by failing to deal with the downstairs tenant. Consequently, the Tenant is liable for a loss of rental income incurred by the Landlords. Although the Landlords said they were unable to re-rent the rental unit until August 1, 2008, they agreed to limit their loss to 5 days of rent or **\$258.06** and I find they are entitled to that amount.

Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit clean and undamaged except for reasonable wear and tear. Section 32 of the Act says that a Tenant is responsible for damages caused by their act or neglect. However, section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to try to minimize their loss.

The Tenant argued that she did not have a reasonable opportunity to clean and repair the rental unit because of the actions of the downstairs tenant which the Landlords did nothing to deter. However, I agree with the Landlords' argument that the Tenant did not have to wait until the last three days of the tenancy to do all of the cleaning and repairs. I also find that while the Tenant was deterred to a certain degree by the tenant downstairs from moving her possessions as quickly as she planned on June 30, 2008, she had a choice to either pay an additional day or two of rent to complete the cleaning and repairs or to leave those matters to the Landlords and compensate them for doing it. I find that the Tenant chose not to do the cleaning and repairs and therefore must compensate the Landlords for their *reasonable* expenses.

I find that the amount of \$250.00 claimed by the Landlords for 10 hours to remove boxes, a couch, garbage and 3 bags of the Tenant's possessions is unreasonable and instead I award them 5 hours at \$20.00 per hour for a total of **\$100.00**. I find that the Tenant was responsible for removing a sofa. I also find that the amount of \$70.00 claimed by the Landlords for 3 hours to drive to the dump and re-cycle depot is unreasonable and instead award them 2 hours at \$20.00 per hour for a total of **\$40.00**

Residential Tenancy Branch
Ministry of Housing and Social Development

plus **\$6.00** for landfill fees. I find that there is insufficient evidence to support the amount of \$275.00 claimed for professional house cleaning. The Landlords provided a copy of an invoice for services rendered but it does not detail how many hours of cleaning were done or what was done. Having regard to the condition inspection report, I find that 8 hours of cleaning at \$20.00 per hour is reasonable and award the Landlords **\$160.00** for that part of their claim. I find that the amount claimed by the Landlords for carpet cleaning is reasonable and award them the amount of **\$156.69**.

Although the Tenant argued that the bathroom and bedroom doors could be refinished at a lower cost, based on the photographs provided by the Landlords, I find on a balance of probabilities that they were too badly damaged and had to be replaced. The Tenant argued that stickers on the bi-fold door could have been removed with solvent, however, she did not explain why she did not remove the stickers if this was the case. In the absence of any further evidence from the Tenant to show that it would have been less expensive to salvage the bi-fold door, I find that the Landlords are also entitled to the replacement cost of this door. Consequently, the Landlords are entitled to the amount of **\$795.21** for this part of their claim.

Based on the condition inspection report, I find that the Landlords are also entitled to recover the cost of replacement light bulbs, door stops and materials to repair chips in the drywall in the total amount of **\$30.86**. The Landlords argued that the window screens were secured in place so that damage was likely caused when the Tenant or her dog pushed the screen out. I find that this on its own is insufficient evidence to conclude that the Tenant was responsible for damaging a window screen through some act or neglect as opposed to wear and tear and as a result this part of the Landlords' claim is dismissed. As the Landlords have been successful in this matter, they are entitled to recover their **\$50.00** filing fee for this proceeding.

I order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the damage award. The Landlords will receive a monetary order as follows:

Unpaid utilities:	\$170.83
Loss of rent:	\$258.06
Landlords' labour:	\$100.00
House cleaning:	\$160.00
Carpet cleaning:	\$156.69
Garbage removal:	\$46.00
Door replacement:	\$795.21
Repairs:	\$30.86
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,767.65



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

Less: Security deposit: (\$800.00)
Accrued interest: (\$10.98)
Balance due: \$956.67

Conclusion

A Monetary Order in the amount of **\$956.67** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount of the order is not paid by the Tenant, 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 26, 2009.

Dispute Resolution Officer