

DECISION

Dispute Codes MND MNDC FF

Preliminary Issues

JURISDICTION - The rental unit consists of 6 bedrooms, two bathrooms, and one shared kitchen. The landlord, as named in this proceeding, is also a tenant. The landlord does not hold any interests in the rental property, nor is he related to the owners of the property. The landlord testified that he rents the entire house from the owners and then sublets each individual bedroom to individual tenants at \$750.00 per month per room.

Based on the aforementioned I find that the *Residential Tenancy Act* applies in this situation and therefore the Director and her delegates have jurisdiction to hear this dispute.

CROSS APPLICATION – The tenant testified that he filed an application for dispute resolution on Friday June 5, 2009.

Rule 5.1 of the *Residential Tenancy Branch Rules of Procedure* states that the minimum time before the scheduled dispute resolution proceeding date that a cross application may be filed is five days before the scheduled dispute resolution proceeding date for the first application, excluding weekends and holidays. Based on the aforementioned, I find that the tenant's application was not filed within the time parameters to enable the two applications to be heard together so the landlord's application will be heard today and the tenant's application at a later scheduled date.

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damage to the unit, for money owed or compensation for damage or loss under the *Act*, and to recover the cost of the filing fee from the tenant for this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 12, 2009. Mail receipt numbers were provided in the landlord's verbal testimony. The tenant was deemed to be served the hearing documents on March 17, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

IS the landlord entitled to a Monetary Order pursuant to Sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began November 7, 2008 and ended by mutual agreement on February 1, 2009. The month rent was payable on the first of each month in the amount of \$750.00.

The landlord testified that the tenant and 4 other tenants resided at the rental unit during the tenant's tenancy for a total of 6 occupants.

The landlord testified that the tenant paid a security deposit of \$375.00 on November 7, 2008 and that the landlord had a written tenancy agreement with the tenant.

The tenant refuted the landlord's statement and advised that there was no written tenancy agreement and that the tenant in fact paid first and last month's rent and \$375.00 damage deposit for a total of \$1,875.00 on November 7, 2008. The tenant pointed out that the landlord had written this on the photocopy of the tenant's passport.

The landlord later changed his testimony to advise that he did not get around to having the tenant sign a tenancy agreement and after a lengthy discussion the landlord confirmed that the tenant did in fact pay first month's rent, last month's rent, and the security deposit totally \$1,875.00.

The landlord testified that he did not conduct a move-in inspection report and did not request or completed a move-out inspection report.

The landlord has submitted a monetary claim for steam cleaning the carpets, a recliner, and a 3 piece sectional couch to clean up the mess caused by the tenant's dog. The landlord testified that the tenant was allowed to have a dog and that the tenant was told that he would be responsible for cleaning up after his dog. The landlord stated that the dog was allowed to be up on the furniture after being outside, tracking dirt and mud on the furniture, and that the dog dragged his bottom on the carpets and soiled the carpets after being outside. The landlord has also submitted a claim for ½ hour of picking up dog feces from the front yard.

The tenant confirmed that he did have a conversation with the landlord about being responsible for pickup up the dog feces from the front yard. The tenant testified that he did spend time picking up the dog feces from the yard as the snow melted the feces became visible and at the time the tenant moved out of the rental unit he did not see any feces remaining on the front lawn. The tenant refuted the landlord's testimony regarding the carpet stating that there was never any conversation about the tenant being responsible for cleaning the carpets.

The landlord testified that his relationship with the tenant deteriorated and the tenant has since threatened the landlord. The landlord stated that after the tenant vacated the rental room that the landlord found a key on the tenant's window ledge and the landlord later determined that this key was a copy of the key for the landlord's private room. The landlord claims that his personal camera and his personal car keys have now gone missing and given that the tenant had a key to access the landlord's personal room, the landlord is claiming that the tenant took the camera, his car keys, and has caused the

landlord to incur the cost of re-keying all of the locks in the rental unit and his personal car.

The tenant refutes the landlord's testimony stating that he did not take the landlord's camera that he did not take the landlord's car keys, and the tenant stated that he has never had a key to the landlord's personal room.

The tenant testified that he received a "ripped" cheque from the landlord as return of the tenant's security deposit. The tenant stated that the cheque was ripped in such a fashion that the bank will not honour the cheque. The tenant advised that this issue will be reviewed during the hearing in relation to the tenant's application for dispute resolution as he has documentary evidence in support of his claim that will be provided in advance of his hearing. The tenant is also claiming that the landlord failed to return the extra month's rent that was paid as last month's rent when he paid the security deposit back in November 2008.

The landlord testified that he enclosed a cheque with the notice of dispute resolution hearing which was sent to the tenant registered mail, and that the cheque was not ripped when he placed it in the envelope. The landlord claims that the tenant did not pay January 2009 rent and that the last month's rent was used to cover January rent.

The tenant stated that the landlord was not telling the truth with respect to January 2009 rent and that this issue also forms part of the tenant's claim.

Analysis

A significant factor in my considerations is the credibility of the landlord given the presence of the landlord's contradictory testimony. In assessing the credibility of the landlord's testimony I am guided by the following:

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find the version of events provided by the Tenant to be highly probable given the conditions that existed at the time. Considered in its totality, I favor the testimony of the tenant over the landlord.

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the landlord's right to claim damages from the tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Steam Cleaning Carpet, Couch, Chair - The landlord has claimed \$31.35 (receipt provided) for the rental of a carpet cleaner and \$180.00 (9 hours at \$20.00 per hour) to steam clean an area rug in the common dining room, an area rug in the common living room, the couch and recliner chair in the common living room.

The landlord did not provide written documentation in support of the age of carpets, couch, recliner chair, and there is no evidence to support what the condition of these items were at the time the tenant began his tenancy or the condition of these items at the end of the tenancy. I note that these items were all located in a common area and used by five other tenants in addition to the tenant in question. Based on the aforementioned I find that the landlord has failed to prove the test for damages, as listed above, and I hereby dismiss the landlord's claim for \$211.35 for steam cleaning carpets and furniture, without leave to reapply.

Pick up Dog Feces – The landlord has claimed ½ hours at \$20.00 per hour to pick up dog feces from the front yard, the landlord submitted picture evidence in support of his claim. The tenant has admitted to making a verbal agreement with the landlord that the tenant would be responsible for cleaning up the dog feces from the yard. Based on the aforementioned I find that the landlord has proven the test for damages as listed above and I hereby approve his claim for \$10.00.

Cleaning Couch Cushions – The landlord has claimed \$20.00 for cleaning couch cushions which are from the couch is the subject of the steam cleaning claim.

The landlord did not provide written documentation in support of the age of couch and there is no evidence to support what the condition of these items were at the time the tenant began his tenancy or the condition of these items at the end of the tenancy. I note that these items were all located in a common area and used by five other tenants in addition to the tenant in question. Based on the aforementioned I find that the landlord has failed to prove the test for damages, as listed above, and I hereby dismiss the landlord's claim for \$20.00, without leave to reapply.

Rental Unit Lock Re-keying and Replacement – The landlord has submitted a claim to have all the rental unit locks re-keyed and to have 10 keys cut for a total cost of \$191.45.

Section 25 of the *Residential Tenancy Act* stipulates that the landlord must re-key or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and pay all costs associated with the changes, when renting to a new tenant.

Based on the above, I find that the landlord has not proven the test for damage or loss and hereby dismiss the landlord's claim of \$191.45, without leave to reapply.

Camera replacement and Re-key Landlord's Car – The landlord has claimed the cost to replace a camera and to re-key his personal car as he cannot locate his car keys or camera since the tenant vacated the rental unit. The landlord submitted a hand written receipt payable to him and did not provide evidence to support the amounts claimed. The landlord did not provide evidence to support that these items are missing as a result of the tenant's actions in contravention of the *Act*.

Based on the aforementioned I hereby dismiss the landlord's claim of \$265.00 to replace his camera and re-key his car, without leave to reapply.

Filing Fee – I find that the landlord has not been primarily successful in his claim and so I hereby dismiss his request to recover the cost of the filing fee, without leave to reapply.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim of \$10.00. A copy of the landlord's decision will be accompanied by a Monetary Order for \$10.00. The order

must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the remainder of the landlord's monetary claim of \$737.80 without leave to reapply. (Steam cleaning \$211.35 + Couch cushion cleaning \$20.00 + Re-key rental unit \$191.45 + Camera replacement and re-key car \$265.00 + filing fee \$50.00)

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: June 12, 2009.

Dispute Resolution Officer