



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNR, MND, MNSD, MNDC, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed the initial application seeking compensation due to the loss of use of portions of the rental unit and seeking the return of double the security and pet deposits paid to the landlord. The landlord filed a cross application seeking compensation related to unpaid rent or utilities, alleged damage to the rental unit and other loss or damage experienced as a result of alleged breaches of the tenancy agreement.

Both parties were provided the opportunity to present oral evidence, submitted documentary evidence prior to the hearing and respond to the evidence of the other party.

Issues(s) to be Decided

Has the landlord established a monetary claim due to unpaid rent, damage to the rental unit and other loss due to a breach of the tenancy agreement by the tenant?

Did the landlord have the right to retain the tenant's security and pet deposits plus interest?

Has the tenant established a monetary claim due to loss of use of some portions of the yard over the tenancy?

Background and Evidence

The parties did not dispute the material terms of this tenancy and agreed that the tenancy began on March 1, 2007 for the initial monthly rent of \$8,000.00 and a security and pet deposit totally \$8,000.00. The original tenancy was a fix term lease which ended on February 28, 2008. The parties entered into a second fix term lease effective March 1, 2008 for another year ending on February 28, 2009. The only change to the agreement was the monthly rent increased to \$8,296.00. A move-in condition inspection was completed on February 26, 2007 and a move out condition inspection occurred on March 19, 2009. The tenant indicated on the report what damages or cleaning she agreed was a result of her tenancy but disagreed with the other issues identified by the

landlord. The landlord received the tenant's forwarding address in writing on March 19, 2009.

The landlord is seeking the following as damages:

Outstanding rent owed for February 2009	\$8,296.00
Replacement of two broken windows	\$1,116.00
Carpet cleaning	\$231.00
Cleaning of house	\$485.10
Cleaning of windows (interior \$168.00 and exterior \$196.00)	\$364.00
Pressure washing of exterior	\$616.00
Replacement of three fire extinguishers	\$128.74
Replacement of damages towel holders and rings (4)	\$126.39
Replacement of gate remotes (4)	\$259.75
Replacement of lights bulbs (21)	\$113.36
Garden maintenance and clean up	\$1,150.00
Final outstanding utilities	\$541.00
Recovery of filling fee paid for application	\$100.00
Total	\$21,548.57

The landlord did not provide any official receipts or estimates from any companies or individuals to support any of the above damages claimed. The landlord provided photographs, but confirmed that the photographs only depicted the condition of the rental unit before this tenancy started and no photographs were provided to show the state of the rental unit at the end of the tenancy.

The landlord submitted that the carpets were beyond repair by cleaning due to the strong odours due to the pets and despite the absence of a receipt submitted that they attempted to clean the carpets. The landlord confirmed that the carpets were approximately 6 years old.

Regarding the house cleaning and garden maintenance the landlord submitted that although the tenant cleaned it was not completed to a standard in which it had originally been provided to them at the start of the tenancy. In addition the pressure washing was specifically required by the tenants at the start of the tenancy and the landlord submitted that the tenant was responsible for pressure washing at the end of the tenancy. The remotes were returned to the landlord but no longer operated.

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The tenant does not dispute some of the claims made by the landlord but argued that significant portions of the landlord's claim are unreasonable and unsupported. The tenant acknowledged that the rent is outstanding for February 2009 and acknowledged some damage, including a portion of the downstairs carpeting, one of the windows, and the missing fire extinguishers. The tenant also submitted that she completed a thorough cleaning of the rental unit both interior and exterior as the conditions permitted. For example, at the time she vacated the rental unit there was snow on the ground which prevented a thorough clean up. However, the tenant stated that she returned to clean up any other leaves and debris.

The tenant submitted evidence to confirm that the carpets to the rental unit were professionally cleaned and that professional cleaners were hired to clean the rental unit. The tenant also provided an estimate from a professional carpet installer for the damage to the carpet. This quote suggests that a full replacement of the damage area would cost approximately \$1,386.00. The tenant argued that the towel rings and racks claimed by the landlord have always been missing or damaged.

The tenant agrees that she is responsible for the following costs to the landlord:

- Outstanding rent and utilities for the sum of \$8,837.00;
- Return of the three fire extinguishers;
- Replacement of small area of damaged carpet for the sum of \$1,386.00;
- Repair of one broken window at an estimated value of \$700.00; and
- Replacement of three remotes for the sum of \$134.99.

The tenant is seeking the return of double the security and pet deposits plus interest due to the landlord's failure to comply with section 38(1) of the *Act*. In addition, the tenant is seeking a monetary claim due to loss of use of the portions of the yard to the rental unit during the summer months. The tenant calculated this loss as 15% of the value of the monthly rent for a period of 24 months for the sum of \$29,332.80.

The tenant argued that the yards were repeatedly and continuously flooded with water which made them unusable. This disrupted the use of the lawns especially in the summer for any use. The tenant stated that although she never issued a written complaint to the landlord about this problem, it had been discussed on multiple occasions and at one point investigated by the landlord.

The landlord denied any knowledge of this issue or that it had been previously raised by the tenants. The landlord questioned why the tenant would have renewed for a further one year lease if there was such a significant issue.

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The tenant countered that it was significant; however, a major move was more inconvenient and it reached the point where she decided to move after the landlord wanted to increase the rent again.

Both the parties acknowledged that the tenant should be reimbursed for some repairs made to the rental unit at her expense for the sum of \$1,248.70.

Analysis

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*.

I deny the landlord's application except for the sum which the tenant has acknowledged. The landlord has failed to provide any evidence to support the sums requested in this monetary claim. In the absence of some receipts, invoices or professional receipts I find that the landlord has arbitrarily assigned values for this application. This is not appropriate or sufficient to establish such a significant monetary claim. I also find that the landlord is seeking costs related to bringing the rental unit up to a standard of cleanliness which is not the responsibility or obligation of the tenant. I draw the landlord's attention to section 1 of the *Residential Tenancy Policy Guidelines Manual* which states:

This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

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The landlord's claims are also not supported by any photographic evidence or witness evidence. For example, there is no third party opinion confirming that the carpets must be replaced due pet odour or any photographic evidence to substantiate that the gardens and grounds were significantly damaged.

I accept the evidence of the tenant that she is responsible for the following costs to the landlord:

- Outstanding rent and utilities for the sum of \$8,837.00;
- Replacement of the three fire extinguishers for the sum of \$128.74;
- Replacement of small area of damaged carpet for the sum of \$1,386.00;
- Repair of one broken window at an estimated value of \$700.00; and
- Replacement of three remotes for the sum of \$134.99.

This results in a total sum of \$11,186.73. I deny the landlord's request to recover the filing fee paid for their application from the tenant.

I accept that the landlord received the tenant's forwarding address in writing on March 19, 2009 and that the landlord failed to return the tenant's security and pet deposits within 15 days as required by section 38(1) of the *Act*. Therefore, I find that the landlord must pay the tenant double her security and pet deposits plus interest for the sum of \$16,222.11.

I deny the tenant's claim for loss of use of the rental unit for the sum of \$29,332.80. I find that the tenant's loss of use of the yard during the tenancy was a minor inconvenience which did not represent any significant problem. I accept the argument of the landlord that if this had been a significant loss the tenant would have raised this as an issue when the lease was closing and renewed in 2008. I find that the tenant has failed to establish that she suffered any loss and the *Act* is not intended to compensate for minor inconveniences.

I do accept the tenant's request to recover the \$100.00 filing fee paid for this application from the landlord. I find that the tenant has established a total monetary claim for the sum of \$16,322.11. After offsetting this sum by the amount owed to the landlord there is a balance of \$5,135.38.

I grant the tenant a monetary Order for the sum of **\$5,135.38**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion



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The landlord's application is without merit except for the sums that the tenant agreed she would compensate the landlord for. I have granted the tenant's application in part and after offsetting this amount by the sum owed to the landlord, I have issued the tenant a monetary Order for the sum of \$5,135.28.

Dated: July 21, 2009.

Dispute Resolution Officer