

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to Obtain a Monetary Order for damage to the unit, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant.

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 May 6, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant was deemed to be served the hearing documents on May 11, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord, Tenant, and Tenant Advocate 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.

Preliminary Issues

The Tenant's Advocate argued that the Landlord's claim for reimbursement of damage to a tire was not a matter before the *Residential Tenancy Branch* and in fact is a matter that should be before ICBC. The Advocate also noted that the Witness letter provided in the Landlord's documentary evidence does not state that the Tenant's son was seen burning the tire, but that it states "the teenager boy from room H".

The Tenant's Advocate testified that the Tenant was not sent copies of the letter and police reports submitted to the *Residential Tenancy Branch* by the Landlord and issued

from the Saanich Police Department. Based on the aforementioned I hereby find that the Landlord has not proven the test for damages as listed below, and I hereby dismiss the Landlord's claim of \$273.84 without leave to reapply.

A decision was issued on June 23, 2009 which states that the Landlord extinguished any right to retain the Tenant's security deposit and a Monetary Order was issued in favour of the Tenant, Ordering the Landlord to pay the Tenant her security deposit and interest in the amount of \$301.09. Based on the aforementioned I hereby dismiss the Landlord's application to keep all or part of the security deposit and advise the parties that the Order issued June 23, 2009 for \$301.09 is still in full force and of full effect.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under Sections 38, 67, 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on October 4, 2008 and ended on November 30, 2009. Rent was payable on the 1st of each month in the amount of \$1,200.00 and the Tenant paid \$300.00 for a security deposit on October 4, 2008.

The Landlord argued that the Tenant's teenage son caused damage to the rental unit. The Landlord stated that the Tenant's son would enter the rental unit by pulling the screen out and climbing through the window and stepping on the toilet tank to gain access. The Landlord argued that the son bent and broke the window screen and frame and cracked the lid to the toilet tank.

The Landlord provided picture evidence in support of the damages claimed and a letter from his maintenance person who reported on the condition of the rental unit prior to the tenancy and at the end of the tenancy. The Landlord stated that the Tenant left a

replacement toilet tank lid lying outside the office door but that this tank did not properly fit the toilet as supported by picture evidence.

The Advocate for the Tenant argued that the Landlord could not prove that the damage was actually caused by the Tenant's son.

The Tenant questioned how we could know that the picture of the toilet lid that did not fit was actually the lid she provided. The Tenant stated that she felt the window screen frame was bent at the time she moved into the rental unit.

The Tenant argued that if the Landlord would have given her son a key to the rental unit then he would not have had to climb through the window, breaking the screen and the toilet tank lid.

The Landlord has requested to recover the cost of the filing fee for this application from the Tenant, as well as to recover the cost of the filing fee for the review decision.

Analysis

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.

Window Screen and Toilet Tank Lid Damages – Given the testimony and documentary evidence before me I find that the window screen, frame, and toilet tank lid were damaged during the Tenant's tenancy. Section 32(3) states that a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned, I find that the Landlord has proven the test for damages, as listed above, and I hereby approve his claim in the amount of \$63.00.

Review Hearing Filing Fee \$25.00 - The Landlord has claimed \$25.00 for reimbursement of the fee he paid on a review of a previous decision that resulted in a Monetary Order being issued against the Landlord. As the review application was not successful I hereby dismiss the Landlord's claim, without leave to reapply.

Filing Fee \$50.00 – I find that the Landlord has been partially successful in his claim and is entitled to recover the cost of the filing fee from the Tenant for this application.

Monetary Order – I find that the landlord is entitled to a monetary claim and that the landlord is entitled to recover the filing fee from the tenant as follows:

Damage to Window screen, frame and Toilet tank lid	\$63.00
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Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$113.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$113.00. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 08, 2009.

Dispute Resolution Officer