

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

This Hearing was scheduled to determine the Landlord’s application for a monetary order for unpaid rent and damages; to keep the security deposit paid by the Tenant; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The parties gave affirmed testimony and this matter proceeded on its merits.

Issues to be determined

1. Is the Landlord entitled to a monetary order and if so, in what amount?
2. Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord gave the following testimony:

- The Landlord mailed the Tenant the Notice of Hearing documents on April 17, 2009, by registered mail to the Tenant’s new residence. The Landlord found where the Tenant was living by following him home after seeing him one day.
- The Tenant and his family moved into the rental unit on July 12, 2008. Monthly rent was \$650.00, due on the first day of each month. The Tenant provided the Landlord with a security deposit in the amount of \$325.00 on July 12, 2008.

There was no written move-in or move-out inspection by the parties. The Tenant moved out of the rental unit on March 31, 2009.

- The Tenants paid half a month's rent in July, 2008, but they moved in to the rental unit on July 12th. The Landlord is claiming for unpaid rent in the amount of \$64.98 for July 12, 13 and 14, 2009.
- Utilities were not included in the monthly rent. The Tenant agreed to pay for half of the utilities (hydro and gas). The Tenant paid his share of utilities in January and February, 2009, but still owes for his share of utilities for the remaining months on the tenancy, in the total amount of 1,274.84.
- The Tenant caused moisture damage in the bathroom, by failing to ventilate the bathroom while taking showers and baths. The Landlord is claiming for the cost of replacing the drywall and tiles; and repainting the bathroom in the amount of \$960.00.
- The Tenants damaged the blinds in the master bedroom. The Landlord is claiming the cost of replacing the blinds in the amount of \$28.39.

The Tenant gave the following testimony:

- The Tenant moved out of the rental unit on March 15, 2009, not on March 31, 2009 as the Landlord alleges.
- When the Tenant moved into the unit:
 - The blinds were broken;
 - The freezer was broken and the Tenant lost food due to spoilage;
 - The kitchen counter was broken;
 - The washroom was mouldy because there was no exhaust fan in the bathroom; and
 - The bathtub faucet was leaking.
- The Landlord turned the heat to the rental unit off for four months.
- The Tenant paid the Landlord for his share of utilities when he paid his rent, and is all up-to-date.

- The Landlord told the Tenant he would be painting the house before the Tenant left.

The Tenant's Witness gave the following testimony:

- The Witness helped the Tenant and his family move into the rental unit.
- When she walked into the suite, she could smell mould in the kitchen, bathroom and the bedroom off the bathroom.
- The blinds in the bedroom were broken.
- The suite had to be thoroughly cleaned by the Tenant.

The Landlord gave the following reply to the Tenant's testimony:

- The Landlord denied turning off the heat in the rental unit and said it was impossible, because the house had only one heat source.
- There is a ventilation system in the bathroom. The Tenant is responsible for the moisture damage in the bathroom because there were six people living in the rental unit and they did not open the vent system in the bathroom when they took showers, and did not keep the bathroom door open to allow steam to escape.

Analysis

The onus is on the Applicant to prove his claim.

I dismiss the Landlord's claim for 3 days of rent, without leave to re-apply. The Landlord did not require the Tenant to pay for an additional three days of rent until he filed his Application for Dispute Resolution in April, 2009, some nine months after the Tenant moved into the rental unit. If the Landlord required the Tenant to pay additional rent, he should have asked for it at the time the Tenant moved in.

In contravention of Section 23 of the Act, there was no move-in inspection done when the Tenant moved into the rental unit. In contravention of Section 35 of the Act, there was no move-out inspection done when the Tenant moved out of the rental unit.

Therefore, there is no documentary evidence to prove the condition of the rental unit when the Tenant moved in and when the Tenant moved out. The Tenant disputes that he caused the moisture damage to the bathroom and claims that the bathroom was in need of repairs and an exhaust fan when he moved into the unit. The Tenant alleges that the blinds were broken when he moved into the unit. The Landlord has not proven this portion of his claim. I dismiss the Landlord's claim for damages to the rental unit without leave to reapply.

The parties did agree to share the utility bills that were in the Landlord's name. However, the Tenant disputes that he owes the Landlord any money for utilities. The Tenant testified that he had paid for monthly utilities when he paid his rent. The Landlord did not submit any documentary proof that the Tenant did not pay the utilities. Such evidence might include, for example, copies of receipts for monthly rent (which would not include any amount for utilities) or copies of bank statements indicating deposits of rent cheques (which would not include any amount for utilities). The Landlord has not proven this portion of his claim. I dismiss the Landlord's claim for unpaid utilities without leave to reapply.

I dismiss the Landlord's application to keep the security deposit, and order that the Landlord return the security deposit to the Tenant, together with interest in the amount of \$2.30, for a total of \$327.30.

The Landlord has not been successful in his application and is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY issued a monetary order in favor of the Tenant the amount of \$327.30, against the Landlord. The monetary order must be served on the Landlord and is

enforceable through the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Dated: July 23, 2009.
