

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for unpaid utilities, damage to the unit, damage or loss under the Act / regulation / residential tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy in this downstairs unit began on January 1, 2009. This tenancy followed an earlier tenancy involving these same parties for an upstairs unit from July 19 to December 31, 2008.

Rent in the amount of \$500.00 was payable in advance on the first day of each month, and a security deposit of \$250.00 was carried over from the previous tenancy. By letter dated June 30, 2009, the tenant gave the landlord notice of his intent to vacate the unit effective July 31, 2009. The tenant did not provide the landlord with his forwarding address.

The parties have differing views around whether or not there was a move-in condition inspection of the unit at the outset of tenancy. In any event, there is no evidence of a completed move-in condition inspection report.

In regard to an inspection and report at the end of the tenancy, the tenant agrees that he declined to do a walk through of the unit and complete a move-out condition inspection report with the landlord. It is understood that this was a reflection of some tension between the parties at that stage.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve a resolution.

Analysis

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may undertake to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that the tenant will pay the landlord the full amount of \$105.35 in relation to previously unpaid utilities as calculated by the landlord;
- that the tenant will pay the landlord 50% or \$250.00 toward the estimated cost of replacing the pet - damaged table.

Section 23 of the Act addresses **Condition inspection: start of tenancy or new pet**. As earlier stated, there is no evidence of a move-in condition inspection report in this tenancy.

Section 24 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part, as follows:

- 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23(3) *[2 opportunities for inspection]*,
 - (b) having complied with section 23(3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Further to the above, however, section 38 of the Act addresses **Return of security deposit and pet damage deposit** and provides in part, as follows:

38(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or...

Pursuant to the above, by way of written authorization dated July 4, 2009, the tenant acknowledged the “unreasonable cleanliness of the suite” and consented to the landlord’s retention of the security deposit plus interest to be put “toward the damages.” In this regard I find that the landlord has established a claim in the amount of \$244.00. This is comprised of general cleaning costs on July 4, 2009 of \$100.00, general cleaning costs on July 29, 2009 of \$60.00, and carpet cleaning costs on July 31, 2009 of \$84.00. In the result, I order that the landlord retain \$244.00 from the tenant’s \$250.00 security deposit.

I dismiss the landlord’s claim for the cost of replacing the bi-fold door in the amount of \$224.00, as this is an estimate and there is no evidence that a cost has been incurred.

In addition to the above, I find that the landlord has established a claim of \$405.00. This is comprised of \$105.00 in unpaid utilities (as agreed between the parties during the hearing), \$250.00 towards replacement of the pet - damaged table (as agreed between the parties during the hearing), in addition to recovery of the \$50.00 filing fee. Further to the landlord’s retention of \$244.00 from the damage deposit for cleaning, as above, I order that the landlord retain the balance of the security deposit of \$8.00 (\$250.00 - \$244.00) plus interest of \$2.04, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$394.96 (\$405.00 - \$10.04).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$394.96**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 23, 2009

Dispute Resolution Officer