# DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, to keep all or part of the pet and or security deposit, for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on November 25, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenants confirmed receipt of the hearing packages.

The Landlord, male Owner, female Owner, Witness, Tenant (1) and Tenant (2), appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order a) for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, and b) to keep all or part of the pet and or security deposit, and c) for unpaid rent or utilities, and d) for damage to the unit, site or property, pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on June 1, 2007 for the monthly rent of $1,500.00 which was payable on the first of each month. A security deposit of $750.00 was paid on June 1, 2007. A move-in inspection form was completed on June 29, 2007 and signed by both parties while the move-out inspection form was completed in the absence of the Tenants. The Landlord and Tenant (2) confirmed they began to conduct the move-out inspection and that Tenant (2) became upset and left prior to the completion of the report.

The male Owner testified that they purchased the home in 2005 and resided in it themselves until these Tenants took occupancy. The male Owner argued that the home was built in approximately 1980 and they painted the rental unit in 2005 and then again in 2007. The male Owner confirmed there was no evidence submitted to support the dates the house was previously painted.

The Landlord testified she has been the property manager of this house since June 2007 and that she took the management of this property with her when she changed employers in July 2009.

The male Owner argued that after he received the estimate of what it was going to cost to clean and paint the rental unit for the new tenants he decided to take on the job himself. The male Owner stated that he did not want to wait for the contractors to be available to do the job as it would delay the new tenant from moving in and he would lose a month's rent.

The Landlord referred to her photo evidence and documentary evidence in the form of receipts in support of their monetary claim as described below.

The Landlord is seeking $1,500.00 for May 2009 unpaid rent. The Landlord advised she received the Tenants' written notice on April 21, 2009 to end the tenancy on May 31, 2009 and the Tenants later contacted the Landlord to inform the Landlord they would be moving by May 15, 2009 and requested that the Landlord use their security deposit as payment of their May 15, 2009 rent. The Landlord testified that she informed the Tenants that they could not request to use the security deposit as payment towards rent and they were responsible to pay the full monthly rent.

Tenant (1) and Tenant (2) confirmed the Landlord's testimony as listed above and confirmed they did not pay money towards May 2009 rent.

The male Owner testified that he flew to the lower mainland then traveled by car to the rental unit to conduct the repairs, and him and his parents arrived on May 29, 2009 at approximately 5:00 p.m. and left on May 31, 2009 at 1:00 p.m. During their stay they cleaned the interior, appliances, painted, raked the yard, collected leaves, and mowed the lawn.

The Landlord is seeking $711.68 which consists of $524.30 in airfare for the male Owner, $167.35 in meals, and $20.03 in fuel costs to travel from the lower mainland to the rental unit. The Landlord argued the Owners live out of town and had to travel to the city where the rental unit is located to conduct the repairs.

The Landlord is seeking $3,969.00 as reimbursement for 126 hours @ $30.00 per hour for the male Owner and his parents to paint the rental unit plus a total of $591.58 for the cost of paint and equipment such as brushes, drop cloths, and rollers.

The Landlord argued that they had to purchase a new fridge, at a cost of $598.49, because of staining inside the fridge of the black soot which they could not get clean. The Landlord argued the black soot was in all of the appliances, fridge, stove, dishwasher and they replaced only the fridge. The Landlord confirmed the fridge operated fine however the new tenant requested a new fridge because of the black staining. The male Owner advised the fridge was in the house when they purchased the house in 2005 and that he could not provide testimony as to its exact age.

The Landlord is seeking $2.46 to purchase bolts to replace a kitchen cabinet door. The Landlord confirmed the broken door is not recorded on the move-out inspection form and there were no photos of the cabinet provided in evidence.

The Landlord is requesting $16.79 for the purchase of lawn seed which was used to re-seed the lawn underneath the leaves which were left on the ground for the two years during the tenancy. The Landlord argued the Tenants should have known they were required to maintain the yard and confirmed there was nothing noted on the tenancy agreement regarding yard maintenance and that the Tenants were not provided written instructions on how to maintain the yard.

The Landlord is seeking $10.03 in cleaning and repair supplies as supported by the receipt in documentary evidence.

The Landlord advised she is paid 10% of the rental income by the Owners to manage the property however she also charges $500.00 to the Owners for her costs in preparing the documents for the hearing and for her time to attend the hearing. She is requesting the $500.00 to be included in the monetary order to cover her fee.

Tenant (2) confirmed she attended the move out inspection at 11:30 a.m. on May 17, 2009, and she left early because the new tenants were at the rental unit and she felt it was not their business to attend the unit during her move out inspection. Tenant (2) argued they cleaned the rental unit and that she painted the living room and her mother's bedroom before the end of the tenancy. Tenant (2) referred to her documentary evidence of paint. When I pointed out the receipts were from 2007 Tenant (2) argued they had paint left over from 2007 and then later confirmed she did not provide evidence that they cleaned the rental unit.

Tenant (1) argued they did not use the dishwasher because it did not work properly so she didn't clean it. Tenant (1) also confirmed the fridge worked properly and there was no need to purchase a new one as they could have cleaned the fridge with an "s.o.s. pad". Tenant (1) stated the fridge was on wheels and was easy to pull out and the stove was on castors and also easy to move. Tenant (1) stated that the walls were not cleaned because she felt it was mould on the walls and did not reply to my questions on why the oven and fridge were not cleaned.

The female Owner testified she attended the rental unit in October 2008 and noticed the black marks throughout the rental unit, which is when they called an electrician to determine if there was a problem with the electrical wiring in the house. The female Owner argued the electrician advised the unit was safe and working properly so the Owners and Landlord decided not to take any action at that time and left the Tenants in the rental unit with the "black soot" throughout the rental unit.

The Witness testified and confirmed that he has lived in the rental unit immediately following these Tenants and that he has occupied the unit since July 1, 2009. The Tenant argued that the rental unit is well painted and there is no presence or reoccurrence of the black substance in the rental unit. The Witness confirmed the unit is heated by electric heat; there are no oil base heaters and no fireplace in the unit that could have created the black substance.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and

3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The amounts claimed by the Landlord which were discussed during the hearing $7,900.03 while the amount documented in the Landlord's evidence amount to $8,322.22. After careful review of the evidence I found the difference of $422.19 is comprised of $376.05 of a hotel receipt, $5.57 from a bargain shop receipt, and $40.57 for various meal receipts. The aforementioned $376.05 of receipts combined with the $711.68 of airfare, fuel, and other meals, are the costs incurred by vacant Landlords to manage their business affairs. The Landlords have made the personal choice to conduct business as Landlords and to reside in another city and costs to conduct their business while residing afar are not the responsibility of the Tenants. Based on the aforementioned I find the Landlord has failed to prove the test for damage or loss, as listed above and I dismiss their claim of $1,087.73 in travel costs.

Section 26 of the Act provides that a Tenant must pay rent when it is due. There is no provision in the Act which allows a tenant to move out mid month and only be required to pay a portion of the month's rent. Section 21 of the Act provides that a tenant must not apply a security deposit to rent unless the landlord gives written consent. In this case the Landlord refused consent to apply the security deposit towards May 2009 rent. The evidence supports the Tenants did not pay May 2009 rent, therefore the Landlord has proven the test for damage or loss and I hereby approve their claim of $1,500.00 in May 2009 rent.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The evidence supports the Tenants did not clean the rental unit as required under section 37 of the Act. The male Owner along with his two parents attended the rental unit the evening of May 29, 2009 to 1:00 p.m. on May 31, 2009 to clean the interior and exterior and to paint the interior of rental unit. The testimony supports the male Owner and his parents were in town for a total of 44 hours and if you consider they had a rest period of 1 hour per day and slept each evening for approximately 8 hours it would mean they worked a total of 25 hours for a total amount of labor of 75 hours (3 people x 25 hours) however they are charging 126 hours in labour to clean and paint the unit.

The testimony also supports that the Landlord and the Owners were aware of the presence of the black substance back in October 2008 and that after hearing the problem was not related to an electrical issue they chose to ignore the issue completely until after the Tenants vacated the rental unit seven months later. Therefore I find the Owners and the Landlord failed to mitigate there loss as there is conflicting testimony and no evidence before me to support what the “black soot” was or if the presence or amount of the black substance increased during the last six months of the tenancy.

Based on the aforementioned I hereby approve the Landlords claim in the amount of $320.00 (16 hours x $20.00 per hour) of labour to conduct a general cleaning or washing of walls and floors, and to clean the washrooms and appliances.

As per the aforementioned I found the Landlord and Owners failed to mitigate their losses by ignoring the problem from October 2008 onward therefore I dismiss their claim of $591.58 for the cost of paint and equipment such as brushes, drop cloths, and rollers.

The evidence supports the fridge was in good working order and that it was replaced for cosmetic purposes because the new tenant did not want to have to look at the black substance on the inside of the fridge. There is no evidence before me to support the fridge could not be cleaned and the documentary evidence does not prove that a fridge was actually purchased. Based on the aforementioned I find the Landlord has failed to prove the test for damage or loss, as listed above and I hereby dismiss their claim of $598.49 for the cost of a fridge.

There is no evidence to support a cupboard door was removed or broken during the tenancy therefore the Landlord has failed to prove the test for damage or loss and I dismiss their claim of $2.46.

The *Residential Tenancy Policy Guideline #1* provides that tenants who reside in single-family dwellings are generally responsible for routine yard maintenance however there is no provision for annual yard clean up or maintenance unless specified by the tenancy agreement. In this case there is no evidence to support the Tenants were advised that they were required to do a fall cleanup to remove leaves from the yard, as a condition of their tenancy. Based on the above I find the Landlord has failed to prove the test for damage or loss and I dismiss their claim of $16.79 for the purchase of lawn seed.

As per the above I have found the Landlord has proven the test for damage or loss in regards to the required cleaning of the rental unit therefore I approve the Landlord’s claim of $10.03 for cleaning and repair supplies.

The Landlord is contracted by the Owners to conduct the Owners' business on their behalf, she is paid 10% of the rental contract, and she chooses to bill the Owners an additional $500.00 to conduct business on their behalf. The contract between the Landlord and the Owners is not governed by the *Residential Tenancy Act* and I find the Landlord's claim of $500.00 does not meet the test for damage or loss, as listed above. Therefore I dismiss the Landlord's request for $500.00.

The Landlord has been partially successful with their claim, therefore I award recovery of the $50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

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| Unpaid Rent for May 2009 | $1,500.00 |
| Cleaning Labour of 16 hours | 320.00 |
| Cleaning supplies | 10.03 |
| Filing fee | 50.00 |
| Subtotal (Monetary Order in favor of the landlord) | **$1,880.03** |
| Less Security Deposit of $750.00 plus interest of $17.95 from June 1, 2007 to March 31, 2010 | -767.95 |
| **TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD** | **$1,112.08** |

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 **$1,112.08**. The order must be served on the respondent Tenants 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: March 31, 2010.

Dispute Resolution Officer