

Decision

Dispute Codes:

MNR; MNSD; MNDC; FF

Introduction

This is the Landlord's application for a Monetary Order for loss of rent for the month of November, 2009, and unpaid utilities; to apply the security deposit towards his monetary award; and to recover the cost of the filing fee from the Tenants.

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

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent for the month of November, 2009?
- Is the Landlord entitled to compensation for unpaid utility charges?

Background and Evidence

The tenancy began on or about July 11, 2009 and ended on October 31, 2009. The Landlord provided a copy of the tenancy agreement in evidence. The tenancy was for a term of 6 months, expiring December 31, 2009. Monthly rent was \$1,500.00, due on the first day of each month. A term of the tenancy agreement was that the Tenants pay 60% of the utilities, which were in the Landlord's father's name. The Tenants paid a security deposit in the amount of \$750.00 on July 11, 2009, along with a "furniture deposit" in the amount of \$300.00 and an "electricity deposit" in the amount of \$125.00.

The Landlord gave the following testimony and evidence:

The Landlord stated that the Tenants ended the tenancy prior to the end of the fixed term and therefore the Landlord seeks compensation for loss of rent for the month of November, 2009. The Landlord has cashed the Tenant's post-dated rent cheque for the month of November and is seeking to keep the funds. The Landlord is not seeking compensation for loss of rent for the month of December, 2009 (the end of the term of the tenancy). The Landlord stated that he made efforts to re-rent the rental unit for November and December, 2009, but was not successful.

The Landlord testified that the Tenants damaged the door to the garage and

The Landlord cashed the Tenant's rent cheque for the month of November and is seeking to keep the funds.

The Landlord testified that the Tenants did not pay their share of utilities, as agreed in the tenancy agreement. The Landlord provided a calculation with respect to the outstanding utilities.

The Tenants gave the following testimony and evidence:

The Tenants testified that the rental unit was not clean when the Tenants moved in. The Tenants stated that there was no move-in or move-out condition report done.

The Tenants stated that the Landlord had left unwanted furniture in the rental unit. The Landlord left two bed frames, a dining suite, sofa and cabinet in the rental unit and a treadmill on the balcony. The Tenants stated that they agreed to use the TV, sofa and home entertainment unit, but wanted the remainder of the Landlord's furniture removed. The Tenants testified that the Landlord did not remove the unwanted furniture and told the Tenants to take the treadmill to the dump.

The Tenants testified that there was a broken step on the outside stairs which was dangerous, but the Landlord refused to fix it.

The Tenants testified that the Landlord and other people, unknown to the Tenants, were accessing the rental property without the Tenants' knowledge or consent. Twice these

people left the door to the garage unlocked when they left. The Tenants testified that the garage was supposed to be for their use, as storage.

The Tenants testified that the downstairs Tenants, with whom they agreed to share the utilities 40/60, had frequent visitors who would do laundry at the rental unit. One of the downstairs Tenants ran a business from the rental property. The Tenants testified that they asked for copies of the hydro and gas bills, but that the Landlord did not provide them.

The Tenants testified that they moved out of the rental unit because the Landlord would not remove his abandoned furniture, and that they were concerned for their children's safety because of the broken stair and the strangers coming on the property, leaving the doors unlocked. The Tenants testified that they asked the Landlord on a number of occasions to remove the unwanted furniture and fix the step. Finally, they gave the Landlord written notice on October 21, 2009, to fix the step. The Tenants provided a copy of the letter in evidence.

When nothing was done after 10 days, the Tenants gave their notice on October 30, 2009 to vacate the premises on October 31, 2009. The Tenants provided a copy of the letter in evidence.

The Landlord provided the following reply:

The Landlord testified that he and his guests were accessing the garage to the rental property. The Landlord stated that he only accessed the garage "a handful" of times. He stated that he did not have to give 24 hours written notice to the Tenants because the garage was a common area and not part of the rental unit. The Landlord stated that he did not fix the step because it was a big project.

Analysis

The Landlord provided copies of the following utility bills:

- Electricity bill for the period of July 23, 2009 to August 24, 2009, in the total amount of \$26.10;

- Electricity bill for the period of May 23, 2009 to July 22, 2009, in the total amount of \$41.00; and
- Gas bill for the period of May 22, 2009 to June 22, 2009, in the total amount of \$125.00, which is a monthly installment.

The other documentary evidence submitted consisted of a summary of expenses that the Landlord stated were compiled by the Landlord after consultation with the electric and gas companies. The burden is on the Landlord/Applicant to prove his claim for unpaid utilities. I find that the Landlord has proven his claim for 60% of the electricity bill for the period of July 23, 2009 to August 24, 2009, in the amount of \$15.66, and a prorated amount of the electricity bill for the period of May 23, 2009 to July 22, 2009 ($\text{July 11} - \text{July 22} = 12 \text{ days} \times .68 \text{ per day} \times 60\% = \4.90), for a total of \$20.56. The Landlord did not provide copies of the electricity bills for the remaining time the Tenants lived in the rental unit, though he could have done so.

The Landlord provided a copy of one gas bill, showing that gas was paid in monthly installments of \$125.00. The Tenants' share would be 60% of that amount, or \$75.00 per month. The Landlord has requested compensation for a total of only \$128.32 for the term of the tenancy, and I allow his claim in that lesser amount.

The Tenants submitted that they sought to end the tenancy because of breaches of the tenancy agreement by the Landlord. Tenants may end a tenancy for a serious breach or breach of a material term of the tenancy, if they:

- Provide the landlord with written notice to end the tenancy, indicting the alleged breach; and
- Give a reasonable amount of time for the landlord to correct the breach.

I find that the Tenants and their children were put at risk because of the broken step and that the Landlord failed to fix the step. Under the tenancy agreement, the Landlord must provide and maintain the residential property in a reasonable state of decoration

and repair, suitable for occupation by the Tenants. The Landlord must comply with health, safety and housing standards required by law (paragraph 10.1(a) of the tenancy agreement). In this case, based on the testimony and documentary evidence provided by both parties, I find that the Tenants provided the Landlord with written notice and the Landlord did not correct the breach. However, the Tenants did not file an Application for Dispute Resolution, and I find that the Tenants did not provide the Landlord reasonable time to fix the step. The Landlord testified that he had attempted to mitigate his loss and re-rent the rental unit in November and December, but he did not provide evidence of any attempts he made to do so. Therefore, I find that the Landlord is not entitled to rent for the full month of November and award him the amount of \$750.00 for partial loss of rent for the month of November, 2009.

The Landlord has been partially unsuccessful in his claim, and I find that he is entitled to recover \$25.00 of his filing fee from the Tenants.

The Landlord has established a monetary award, as follows:

Compensation for unpaid electricity	\$20.56
Compensation for unpaid gas	\$128.32
Partial compensation for loss of November, 2009 rent	\$750.00
Partial recovery of the filing fee	\$25.00
TOTAL	\$923.88

The Act defines a security deposit, as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. I find that the \$300.00 furniture deposit and the \$125.00 utility deposit were both security deposits, and therefore the Tenants paid a total security deposit of \$1,175.00. No interest has accrued on the security deposit.

The Landlord cashed the Tenant's post-dated cheque for November, 2009 rent, and therefore I set off Landlord's monetary claim against the November rent and the security

deposit and provide the Tenants with a monetary order for the balance, calculated as follows:

Return of November, 2009 rent	\$1,500.00
Security deposit	<u>\$1,175.00</u>
Subtotal	\$2,675.00
Less Landlord's monetary award	<u>-\$923.88</u>
TOTAL	\$1,733.12

I hereby provide the Tenants with a monetary order in the amount of \$1,733.12 against the Landlord.

Conclusion

The Landlord has established a monetary claim in the amount of \$923.88, which may be set off against the November, 2009 rent cheque cashed by the Landlord and the security deposit paid by the Tenants. The Landlord must return the balance to the Tenants.

I hereby grant the Tenants a Monetary Order in the amount of \$1,733.12 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced 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: May 12, 2010