

DECISION

Dispute Codes

MND, MNDC, MNR, MNSD, FF

Introduction

This is the Landlord's application for a Monetary Order for damages to the rental unit, compensation for damage or loss and unpaid rent; to apply the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony and this matter proceeded on its merits.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid utilities, unpaid rent for the month of December, 2009, and damage to the rental property?

Background and Evidence

The following facts were not in dispute:

- This tenancy began on April 1, 2008 and ended on November 30, 2009. The rental unit is the upper floor of a house. Monthly rent at the end of the tenancy was \$1,348.00, due on the first day of each month.
- The Tenants paid a security deposit and a pet damage deposit, each in the amount of \$650.00, on April 6, 2008
- The Tenants' share of utilities was 60%, with the downstairs tenants paying the other 40%.

- On November 5, 2009, the Tenants asked the Landlords if they could give short notice to end the tenancy on November 30, 2009. The Tenants gave written notice to end the tenancy on November 14, 2009, with no end of tenancy date.
- The Landlords have retained the security and pet damage deposits.

Both parties gave oral submissions with respect to a number of issues which were not relevant to the Landlords' claim and I make reference in this Decision to the relevant portions of the parties' testimony and documentary evidence only.

The Landlords testified that they agreed the Tenants could pay only half a month's rent for December if the Landlords could find suitable new tenants for December 15, 2009, but if they could not do so, the Tenants would be liable for full rent for December, 2009.

The Tenants testified that the Landlords agreed to retain the security deposit of \$650.00 in lieu of rent for half of December, 2009, and that they would not seek rent for the other half.

The Landlords seek compensation for unpaid utilities for the months of October, November and December, 2009, in the total amount of \$552.39. Copies of the utility bills were entered in evidence.

The Tenants agreed that they were liable for October and November utilities for a total of \$264.26, but disputed responsibility for December utilities in the amount of \$288.13. The Landlords stated that the December utilities were higher than normal, and suggested it may be because the water heater had malfunctioned and had to be replaced. The Landlords testified that the rental unit was heated to 18 or 19 degrees after the Tenants moved out because the temperature controls for the whole house were situated in the lower suite.

The Landlords seek compensation for the cost of registered mail (service) and photographs in the total amount of \$78.39. The Tenants dispute this portion of the Landlords' claim.

The Landlords seek compensation for the cost of stain removal and shampooing the carpet in the amount of \$105.00. The Tenants submitted that they shampooed the carpets at the end of the tenancy and therefore they dispute this portion of the Landlords' claim.

The Landlords testified that the Tenants did not leave the rental unit in a condition of satisfactory cleanliness and damaged a door, some walls and insulation inside a storage area. The Landlords testified that the Tenants removed a garbage bin and a recycling bin from the rental unit. The Landlords submitted that the Tenants were responsible for yard work and maintenance under the tenancy agreement. They claim costs for yard work, including raking and disposal of leaves; house cleaning; painting; replacing a damaged door; repairing a damaged door; repair of insulation; replacement of a recycling and a garbage bin; minor repairs; and debris removal. The Landlords also seek compensation for their labour in cleaning, painting and making repairs.

The Tenants denied removing the garbage bin and recycling bin. They submitted that they were responsible for mowing and watering the lawn only, and that they had complied with that requirement of the tenancy agreement. The Tenants testified that they left the rental unit in a reasonable state of cleanliness. The Tenants testified that they did not clean behind the appliances because they were fearful of damaging the linoleum if they pulled the appliances away from the walls. The Tenants submitted that the insulation inside the storage area was damaged when they moved into the rental unit.

The Tenants' Witness testified that she was present when the Tenants moved into the rental unit. She stated that the front door was damaged when the Tenants moved in, and that there were marks on the walls at the beginning of the tenancy. The Witness

testified that she helped the Tenants to clean the house and shampoo the carpet before they moved out.

The Landlords stated that they videotaped the rental unit before the Tenants moved in, but did not provide a copy of the videotape in evidence. The Tenants stated that the video tape that was taken when they moved in was an important part of the move-in condition report, and that they had never been provided a copy.

The Landlords served the Tenants with a Notice of Rent Increase in the approved form on August 3, 2009, increasing the rent \$48.00 per month. The Notice states that the increase became effective November 1, 2009. The parties agreed that the Tenants started paying the rent increase on September 1, 2009.

Analysis

The Landlord's seek to recover the cost of serving the Tenants and developing photographs. These costs are not recoverable, and this portion of the Landlords' application is dismissed.

Section 44(1) of the *Residential Tenancy Act* (the "Act") states:

How a tenancy ends

44 (1) A tenancy ends **only if one or more of the following applies:**

(a) **the tenant or landlord gives notice to end the tenancy in accordance with one of the following:**

(i) **section 45 [tenant's notice];**

(ii) *section 46 [landlord's notice: non-payment of rent];*

(iii) *section 47 [landlord's notice: cause];*

(iv) *section 48 [landlord's notice: end of employment];*

(v) *section 49 [landlord's notice: landlord's use of property];*

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree **in writing** to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(emphasis added)

Section 45(1) of the Act states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, **and**

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Tenants provided their written notice, dated November 14, 2009, to end the tenancy. Rent was due on the first day of each month and therefore, in accordance with the provisions of Section 45(1) of the Act, the earliest possible end-of-tenancy date was December 31, 2009. There was no written agreement that the Landlords would accept an earlier end-of-tenancy date. Therefore, I find that the tenancy ended on December 31, 2009, and that the Landlords are entitled to a monetary award in the amount of \$1,348.00 for unpaid rent for the month of December, 2009.

The Tenants did not dispute responsibility for utilities in the amount of \$264.26, and I allow this portion of the Landlords' claim. I find that the Tenants are not liable for payment of the December utilities as claimed. The cost of utilities for the month of

December was more than twice as high as the total cost for the months of October and November. The Landlords testified that the hot water heater was faulty and was likely to have contributed to the higher than usual utility bills in December. The Tenants did not live in the rental unit for the month of December, and therefore sufficient heat in the rental unit was all that was required to keep the rental unit from suffering damage (i.e. frozen pipes). I find that the Tenants are not responsible to pay the cost of maintaining a comfortable room temperature for the vacant rental unit, or for the additional cost of the utilities as a result of a broken hot water heater. Therefore, the Landlord's claim for unpaid utilities of \$288.13 for the month of December is dismissed.

At the end of a tenancy, tenants must leave a rental unit in a reasonable state of cleanliness and are responsible for damage beyond normal wear and tear. Based on the oral testimony and documentary evidence of both parties, I find that the Landlords have proven their claim for the cost of hauling the Tenant's garbage to the dump and for 3 hours of cleaning the rental unit after the Tenants moved out (i.e. cleaning behind the appliances, drawers, and the heat register in the kitchen). I find that the Landlords are also entitled to compensation for one hour of labour for loading and taking the Tenant's garbage to the dump. The Landlords have claimed \$20.00 per hour for their labour, which I find to be high, and set the hourly rate at \$15.00 per hour. I find the Landlords are entitled to compensation for the damage to the bedroom door. The Tenants had a dog, and there was evidence of dog hair in the carpet after the Tenants used a home-style carpet shampooing machine. The Landlords provided a receipt for the cost of a professional carpet cleaning, and I allow this portion of the Landlords' claim. I dismiss the remainder of the Landlords' claim with respect to cleaning the rental unit, as I find their standard for "reasonably clean" is higher than the norm. The remainder of the Landlords' claim for damages is dismissed as unproven.

The Landlords have established a monetary award, as follows:

Description	Amount awarded
Unpaid rent for December, 2010	\$1,348.00
Unpaid utilities for October and November, 2009	\$264.26
Dump fees and labour to remove Tenants' garbage	\$44.25

Door	\$131.00
Cost of professional carpet cleaning	\$105.00
Compensation for 3 hours of labour for cleaning	\$45.00
TOTAL	\$1,937.51

The Landlords have been partially successful in their application and are entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlords may apply the security and pet deposits, along with accrued interest in the amount of \$14.39, in partial satisfaction of their monetary award.

Pursuant to the provisions of Section 40(2) of the Act, a Notice of Rent Increase must be provided three clear months before the effective date of the increase. Therefore, I find that the effective date of the rent increase was December 1, 2009. The Tenants started paying the increased rent on September 1, 2009. The Tenants overpaid rent in the amount of \$48.00 for each of the months of September, October and November, 2009, and I off-set the Landlords' monetary award in the amount of \$144.00, representing the overpayment.

I hereby provide the Landlords with a Monetary Order against the Tenants, calculated as follows:

Description	Amount awarded
Total monetary award	\$1,937.51
Recovery of filing fee	\$50.00
<u>Less overpayment of rent for Sept., Oct. and Nov. (3 x \$48.00)</u>	<u>-\$144.00</u>
Less security and pet damage deposits and accrued interest	<u>-\$1,314.39</u>
Balance due to the Landlords after set-off	<u>\$673.12</u>
	<u>\$529.12</u>

Conclusion

I hereby grant the Landlords a Monetary Order in the amount of ~~\$673.12~~ \$529.12 against the Tenants. This Order must be served on the Tenants 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 27, 2010

CORRECTED JUNE 7, 2010