

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid utilities; to keep all or part of the pet and security deposits, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant was done in accordance with the Act, served personally by the Landlord to the Tenant's forwarding address. The Tenant confirmed receipt of the hearing package.

The Landlord, Property Manager and the Tenant 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 under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony included the fixed term tenancy began on May 1, 2009 and was set to switch to a month to month tenancy after April 30, 2010. The Tenancy ended by mutual agreement and the Tenant vacated the rental unit on November 30, 2009. Rent was payable on the first of each month in the amount of \$1,800.00 and the Tenant paid a security deposit of \$900.00 on April 4, 2009 and a pet deposit of \$900.00 on May 1, 2009. Move-in and move-out inspection reports were not completed by the Landlord.

The rental unit was one of a fourplex complex that was originally constructed in 1912 and renovated from "bare bones post and beam, everything up to code" in 2008. The unit was occupied by the owner from completion of the renovations until the Tenant occupied the unit in May 2009.

The Property Manager testified the Landlord is seeking \$822.40 to repair damages caused to the unit during the tenancy which consists of repairs and painting to the stairwell, replacement of the kitchen faucet, and repair to a kitchen cabinet drawer.

The Property Manager argued the Tenant damaged the wall in the stairwell while bringing his bike in and out of the unit and that it cost the Landlord \$316.00 to repair and repaint the entire stairwell. (\$76.00 repairs \$240.00 labour). The Property manager confirmed they have an arrangement with their contractor where they pay a flat rate for labour of \$240.00, regardless of the size of the job.

The Landlord argued that the kitchen faucet had a screw missing and was damaged somehow to the point where it needed to be replaced. The Property Manager explained that a screw was missing and the faucet base was damaged as a result. The replacement faucet was purchased by the Landlord at a cost of \$206.40 and installed by their contractor plumber at a cost of \$200.00 for labour which is also a flat rate fee, regardless of the size of the job.

The Property Manager testified that he witnessed the damage to the kitchen drawer whereby the cabinet front was no longer attached to the drawer and was left loose in the kitchen. The Landlord's handyman reattached the drawer front at a charge of \$100.00 for his labour.

The Property Manager confirmed that they created one invoice, on the Property Manager's business letterhead whereby they listed each repair item and cost and then added GST and PST to the total. The Landlord and Property Manager confirmed that they did not provide evidence of copies of the actual invoices issued by their contractors.

The Landlord testified he is seeking \$324.25 in unpaid hydro bills and argued that the tenancy agreement did not include the cost hydro. The Landlord argued that the Tenant was required to pay $\frac{1}{4}$ of the hydro bill which is divided between the total number of tenants occupying the two units serviced by the same hydro meter. So in this case there is one occupant in the Tenant's unit and three occupants in the unit which shares the hydro meter, hence the Tenant is required to pay $\frac{1}{4}$ of the bill. The Landlord testified that copies of the bills were taped to the Tenants door for payment however the Tenant failed to pay the Landlord for the hydro. The Landlord stated that he chose not to confront the Tenant to collect the hydro costs at the time as they were dealing with the Tenant's Agent for an agreement to end the tenancy.

The Landlord stated that he had submitted photos with their evidence, however there

were no photos included in the evidence received at the Residential Tenancy Branch. The Tenant confirmed that he did not receive photos with his copy of the Landlord's evidence.

The Tenant testified and argued that he thought hydro costs were included in his rent and that he never saw a hydro bill posted to his door which is why he has not paid the Landlord for hydro costs from the onset of the tenancy. The Tenant stated that he would never agree to share hydro costs with another unit that had three tenants using hydro while he was the only person using hydro in his unit. The Tenant also argued that if he was supposed to pay for hydro why did he not change the hydro bill into his own name. The Tenant confirmed that he had been given a copy of the tenancy agreement prior to the end of his tenancy.

I confirmed that both parties had a copy of the tenancy agreement and that neither party provided a copy of the agreement in evidence. I requested the Landlord to fax a copy of the tenancy agreement to the Residential Tenancy Branch after today's hearing.

The Tenant stated that there was existing damage on the walls throughout the rental unit from the onset of the tenancy. The Tenant argued that he never damaged the walls with his bike and there were nails popping through the drywall and the paint job was "substandard throughout the unit". The Tenant pointed out that there was no move-in inspection report completed therefore the Landlord could not prove that the condition of the rental unit at the end of the tenancy was anything more than normal wear and tear.

The Tenant testified that a few weeks prior to the end of the tenancy he came home to find the Landlord and a plumber in his kitchen working on something at the kitchen sink. The Tenant argued that he had no notice of this and that the Landlord told him there had been a leak and that they were there to complete emergency repairs. The Tenant claims he did not damage the faucet in the kitchen and that the emergency repair just prior to the end of the tenancy involved the faucet.

The Landlord confirmed that he was in the rental unit with the plumber repairing a leak but that this leak involved underneath the sink and problems with loose screws with the faucet.

The Tenant confirmed the drawer facing came off during his tenancy and then argued that it was off at the onset of the tenancy. When I pointed out to the Tenant that he contradicted his own testimony he confirmed that the while the drawer facing came off during his tenancy he was only there for seven months and added that there is no proof

to deny or confirm that it was loose at the onset of the tenancy and therefore considered normal wear and tear.

Analysis

All of the testimony and documentary evidence was carefully considered.

A faxed copy of the tenancy agreement was received at the Residential Tenancy Branch on May 12, 2010. The document received was not completely legible so a request was made to have a second fax sent in attempts to receive a clearer copy. To ensure the principles of natural justice are upheld copies of both faxes are attached to this decision.

Upon review of the faxed documents it appears that the written tenancy agreement used in this tenancy was the standard RTB tenancy form and given the locations of the "X" marks on the faxed document it would be reasonable to conclude that the Tenant's rent included water, stove and oven, dishwasher, refrigerator, window coverings, garbage collection, and parking for 1 vehicle.

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 evidence provided by the Landlord in support of his claim for damages consists of an invoice created on the Property Manager's company letterhead which lists a dollar amount charged with PST and GST added. I note there is no Business Number or GST Number listed on this invoice which authorizes the collection of PST and GST. I also

note there were no supporting invoices, from the contractors who performed the repairs, to verify when the repairs were completed and the actual cost to complete the repairs. In the absence of a condition inspection report, and in the presence of contradictory testimony, I find there is no evidence to support the condition of the rental unit at the onset of the tenancy or at the end of the tenancy or that any alleged damage to the unit was caused during the length of the tenancy. 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 his claim of \$822.40.

The Landlord's claim for unpaid utilities was for \$324.25 however the copies of actual hydro bills submitted in evidence at ¼ the invoice amount totals \$119.58. The Tenancy agreement supports that the Tenant's monthly rent did not include electricity however there is nothing documented stating that the hydro meter services two units and what portion of the electrical bills would be the responsibility of the Tenant. Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In the presence of the conflicting testimony and unclear terms in the tenancy agreement, I find the Landlord has failed to prove the test for damage or loss, as listed above, and I dismiss his claim for reimbursement of hydro costs.

The Landlord has not been successful with his application; therefore I decline to award recovery of the filing fee.

Having dismissed the Landlord's application above, the Landlord has no entitlement to hold the security and pet deposits. Therefore I order the Landlord to return to the Tenant the full \$900.00 security deposit, plus the full \$900.00 pet deposit, plus interest of \$0.00.

Conclusion

I HEREBY DISMISS the Landlord's application, without leave to reapply.

A copy of the Tenant's decision will be accompanied by a Monetary Order in the amount of **\$1,800.00**. This Order may be filed in B.C. Provincial Court 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.

Dispute Resolution Officer