

Decision

Dispute Codes: MND, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. A monetary order for rental arrears, unpaid utilities and damage to the rental premises pursuant to section 67.
2. An Order to be allowed to keep all or part of the security deposit pursuant to section 38.
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

Both parties appeared and were given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that he served the tenants with the Application for Dispute Resolution hearing package by way of registered mail.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to a monetary order for rental arrears, unpaid utilities, damage to the rental premises and a recovery of the filing fee for this application.

Whether the landlord can retain the security deposit.

Background and Evidence

The landlord testified that this tenancy was established by way of a one-year fixed term tenancy agreement commencing on December 1, 2008. Rent of \$900.00 was payable on the first of each month. The tenancy agreement made the tenants responsible for

one half of the utilities on this property. A security deposit of \$450.00 was paid on or about December 1, 2008.

The landlord testified that the tenants provided written notice that they were discontinuing their lease of the premises on January 7, 2010. The landlord provided a copy of the tenants' written notice to vacate the premises by February 1, 2010. The tenant testified that the landlord was given oral notice of their intention to vacate the rental premises a few weeks before they provided written notice on January 1, 2010. The tenant confirmed that the tenants vacated the premises a few days before February 1, 2010.

The landlord's February 12, 2010 application for dispute resolution included the following:

February 2010 Rent	900.00
Outstanding Utilities Owing	160.00
Replace Front Door and Locks, Repair Kitchen Cabinet	250.00
Cleaning	100.00
Repair Window Bars	100.00
Repair Water Damage	300.00
Recovery of Filing Fee for application	50.00
Total Monetary Order Sought	1,860.00

On May 5, 2010, the landlord provided additional evidence to the tenants and the Residential Tenancy Branch in support of the February 12th application for dispute resolution. This evidence package included photos, receipts, invoices, various statements and documents. The landlord outlined additional expenses in this package, maintaining that the tenants were responsible for \$3,562.19 rather than the original \$1,810.00 (plus the \$50.00 filing fee) outlined in the February 12, 2010 application. Since no amended application for dispute resolution was submitted or served by the landlord, I find that the tenant was not properly notified that the landlord would be seeking dispute resolution of the additional expenses beyond what was originally claimed in the February 12th application. For that reason, I have considered the original application as outlined above.

The landlord's application for a monetary order included an application for \$750.00 in repairs, damage and cleaning that the landlord maintained resulted from the tenants' actions. These repairs included damage that the landlord alleged were caused by the tenants to the front door and lock, to the kitchen cabinets, and to window bars. The landlord also testified that the tenants did not conduct an adequate cleaning of the fridge, stove and floors. The landlord testified that an incident in early March 2009 resulted in substantial flooding from the tenants' toilet causing significant damage to the suite below the premises.

The landlord's witness, the tenant in the suite below the rental premises, gave sworn evidence to confirm the landlord's evidence regarding the timing and extent of the damage caused. She said that the ceiling tiles will need to be removed and replaced when she moves from the building in June 2010. She also stated that she had not encountered difficulties with the toilets when she occupied the tenants' rental unit prior to the tenants moving into that unit in December 2008. The witness also confirmed the landlord's testimony that the tenants' rental premises were in good condition when she moved to the lower suite immediately prior to the tenants' commencement of their lease.

The tenant testified that she did attend the move-out inspection on January 31, 2010, but refused to sign the landlord's inspection report. She refused because she did not believe that the tenants should be held responsible for damage to the front door and water damage stemming from the March 2009 flooding incident. The tenant maintained that the damage caused to the front door resulted from a break-in to the rental unit on December 29, 2009. Although she testified that she called the police to report this break-in, she was not able to obtain a police file number for this break-in. She testified that she reported the break-in and damage to the landlord immediately. The landlord gave sworn testimony that the tenants did not report this break-in to him until they gave him written notice that they were planning to vacate the premises at the end of January.

The landlord also provided written evidence from a neighbour raising concerns about the tenants' behaviour and the disruption to the neighbourhood caused by the noise and partying that was occurring at the tenants' rental premises. The landlord testified that he believed that the tenants were responsible for the damage to the front door and lock and questioned the tenant's account of how this damage occurred.

Analysis

Monetary Order for Rental Arrears

In reviewing the written notice to vacate the premises provided by the tenants to the landlord, I find that this notice was provided on January 7, 2010, as alleged by the landlord. Under these circumstances, I find that the tenants did not give a full one month written notice to the landlord that they were vacating the premises at the end of January. Under these circumstances, I find that the landlord is entitled to his requested \$900.00 in rent for the month of February.

Monetary Order for Unpaid Utilities

During the course of the hearing, the tenant agreed that the landlord was not paid for one-half of the utilities that were due as of the date that they vacated the premises. I find that the tenant is responsible for the \$160.00 in utilities requested in the landlord's February 12, 2010 application for dispute resolution.

Monetary Order for Damage to Rental Premises

During the course of the hearing, there was considerable evidence provided regarding the details and circumstances regarding damage to the rental premises. At the hearing, the tenant accepted responsibility for the landlord's assertion that missing heating registers and kitchen strainers needed to be replaced following the tenancy. She also accepted that the tenants should be held responsible for the landlord's repairs to the kitchen cabinets and cleaning costs to the fridge and stove.

I am satisfied that the landlord has submitted sufficient evidence to demonstrate that the landlord has incurred at least \$250.00 in repairs to the kitchen cabinets, closet door, and the replacement of the front door and lock identified in the landlord's February 12, 2010

application. The absence of a police file number calls into question the adequacy of the tenant's evidence that the damage to the front door and lock were caused by a break-in to the premises. For that reason, I find that the landlord is entitled to recover \$250.00 from the tenant for repair of the kitchen cabinets, closet door and the replacement of the front door and locks. In coming to this determination, I note that the actual receipts for these items presented by the landlord (\$437.25) far exceed the \$250.00 claimed by the landlord in his February 12, 2010 application.

The evidence from all parties, including the landlord's witness, confirms that the source of the extensive March 2, 2009 water damage was the tenants' bathroom. There is also agreement that the damage caused still needs to be repaired, as also evidenced by the photographs that the landlord submitted in support of his application. The landlord and the landlord's witness testified that these repairs have been delayed until the landlord's witness vacates her suite in June 2010. The landlord has submitted a new estimate of the cost of repairs at \$1,758.75. Since the landlord did not amend his application and this is a significant increase in the estimated cost of repairs, I am only considering the \$300.00 identified in the landlord's February 12, 2010 application.

The issue in dispute with respect to the water damage is whether the tenant or the landlord should bear responsibility for repairing the damage arising out of the March 2, 2009 incident. The evidence presented indicates that the flooding initiated as a result of a plugged toilet in the tenants' bathroom. The landlord maintains that the tenant is responsible for ensuring that items deposited in the toilet do not cause major flooding problems of this nature. There is insufficient evidence to enable me to decide that the landlord was in some way responsible for the flooding that occurred in the middle of the night on March 2, 2009. Instead, on the balance of probabilities, I find that the tenant is responsible for the flooding that evening and the damage caused. I am including in the landlord's monetary order an allowance of \$300.00 for the repairs that will be necessary to repair the flooding damage that was done that evening.

The landlord testified that he spent \$30.00 and not the \$100.00 outlined in his February 12, 2010 application to repair broken security bars in the rental premises. He stated that he did not notice this damage when he conducted the move-out inspection with the tenant and has no receipt for this item. In the absence of this documentation, I am not including an allowance for repairing the window security bars in this monetary order.

Security Deposit

The landlord testified that he continued to hold a security deposit of \$450.00 plus interest from December 1, 2008 to the date of this decision. I will allow the landlord to retain the security deposit plus interest in partial satisfaction of the monetary award.

Filing Fee

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am making an Order in favour of the landlord as follows:

Rental Arrears for February 2010	\$900.00
Unpaid Utilities at end of tenancy	160.00
Repairs to front door and locks, kitchen cabinets and closet door	250.00
Replacement of Heat Registers and Kitchen Strainers	48.19
Cleaning	100.00
Repair Water Damage	300.00
Less Security Deposit and interest	-450.57
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,357.62

The landlord is provided with a formal Order in the above terms. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.