

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any of the above under the Act, regulation, or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from August 1, 2008 to July 31, 2009. Thereafter, there is no evidence of a new written agreement for what appears to have become a month-to-month tenancy. Rent of \$1,520.00 plus water utilities of \$31.00 was payable in the combined amount of \$1,551.00 in advance on the first day of each month. A security deposit of \$760.00 was collected on or about August 1, 2008.

Prior to the subject tenancy, there was an earlier tenancy agreement between this landlord, this tenant, and one additional tenant who later vacated the unit. Arising from that tenancy, a pet damage deposit of \$100.00 was collected on or about February 1, 2008. Further, a move-in condition inspection and report were completed by the parties on January 25, 2008, but not subsequently.

By letter dated October 25, 2009, the tenant informed the landlord of her intent to vacate the unit effective November 30, 2009. While a walk through of the unit was

undertaken by the parties on November 29, 2009, a move-out condition inspection report was not completed.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(b) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I address the landlord's claims and my findings around each as follows:

\$525.00: carpet replacement. During the hearing, the landlord withdrew this aspect of his application.

\$730.80: furnace repair. The landlord had the furnace serviced immediately after the end of tenancy on December 4, 2009. The landlord stated that he has owned the house for approximately 28 years. He also testified that while he has

not replaced the furnace during that time, the furnace has undergone maintenance and certain parts have been replaced. While the landlord could not confirm when maintenance had last been done before December 4, 2009, the tenant testified that a decal on the furnace indicated that the last maintenance had been completed in 2007.

Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises.” Under heading, “FURNACES,” this guideline states, in part:

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer’s specifications, or annually where there are no manufacturer’s specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

Further to the above provisions, and based on the documentary evidence and testimony of the parties, I find there is insufficient evidence to support the landlord’s claim that the tenant is responsible for the cost of service to the furnace, which included replacement of certain parts. Accordingly, this aspect of the landlord’s claim is dismissed.

\$252.00: carpet cleaning. The tenant stated that pets had been in the unit prior to the start of her tenancy, and that she undertook to clean the carpets herself at the outset of tenancy. She testified that she rented the necessary equipment and cleaned the carpets again at the end of tenancy. She stated that the landlord expressed no concerns about the condition of the carpets during the walk through of the unit at the end of tenancy.

Further to the above and, in the absence of a move-out condition inspection report, this aspect of the landlord’s application is hereby dismissed.

\$207.90: sanding & painting of kitchen wall. The tenant acknowledged that she had hung certain kitchen utensils on a portion of the kitchen wall. She testified that abrasive marks left on the wall after their removal were discussed with the landlord during the walk through at the end of tenancy. Following this, while the tenant stated that she patched the marks on the wall, the landlord stated that the patches still required sanding and painting. Residential Tenancy Policy Guideline # 1, as above, under the heading, "Nail Holes," provides in part, as follows:

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Following from the above, based on the documentary evidence and testimony of the parties, and in the absence of a move-out condition inspection report, I find that the landlord has established entitlement to compensation for this aspect of his application in the limited amount of \$103.95* which is half the amount claimed.

\$50.00: filing fee. As the landlord has achieved partial success in this application, I find he is entitled to recover half the filing fee in the amount of \$25.00*.

As for the monetary order, I find the landlord has established entitlement to \$128.95. This is comprised of \$103.95 for sanding and painting (as above), in addition to recovery of half the filing fee of \$25.00. I order the landlord to withhold \$128.95 from the combined pet damage deposit and security deposit, and return the balance, including interest, FORTHWITH to the tenant in the amount of \$737.19. The amount to be repaid to the tenant is calculated as follows:

\$100.00 (pet damage deposit) + \$760.00 (security deposit) + \$6.14 (combined interest) = \$866.14.

\$866.14 (two deposits plus interest) - \$128.95 (landlord's compensation) = \$737.19.

Conclusion

I hereby order the landlord to retain **\$128.95** from the tenant's pet damage deposit and security deposit combined.

I hereby order the landlord to FORTHWITH repay the balance of the pet damage deposit and security deposit plus interest to the tenant in the amount of **\$737.19**, and I issue a **monetary order** in favour of the tenant for this amount. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 6, 2010

Dispute Resolution Officer