Decision

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Background

This is the Landlords' application for a Monetary Order for unpaid rent or utilities, damage to the rental unit and compensation for damage or loss under the Residential Tenancy Act (the "Act"); to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

This matter was heard by way of teleconference on March 16, April 21, and June 10, 2010. Interim Decisions were rendered on March 16 and June 17, 2010. The Hearings on April 21, 2010 and June 10, 2010 both exceeded the allotted time limit. At the end of the Hearing on June 10, 2010, both parties wished to make final submissions with respect to the issues raised, but the teleconference session expired before they could do so. Therefore, pursuant to the provisions of Section 74(2)(b) of the Act and Rule 14.1 of the Residential Tenancy Branch Rules of Procedure, I gave permission for both parties to provide me with written submissions. The Interim Decision rendered on June 17, 2010, provided directions with respect to how the parties were to provide their submissions to me and to each other.

Issues to be Decided

- Was there a tenancy agreement between the Landlords and the Tenant?
- Are the Landlords entitled to a Monetary Order against the Tenant for unpaid utilities, loss of rental income, and compensation for a damaged lock and shampooing the carpet?
- Disposition of the security deposit.

Background and Evidence

The rental unit is the lower suite of a house, which contains two suites. The other suite (the "upper" suite) was occupied by another tenant of the Landlords' (the "upstairs occupant"). The Tenant moved into the rental unit on July 31, 2009. Monthly rent was $775.00. The Tenant paid the Landlords a security deposit in the amount of $387.50 and a pet damage deposit in the amount of $387.50 at the beginning of the tenancy. There was no written tenancy agreement between the parties. The Tenant vacated the rental unit on October 31, 2009.

The Landlords testified that the parties met to perform a move-in inspection of the rental unit on July 31, 2009. A copy of the inspection report was entered in evidence by the Tenant. The Landlords acknowledge that the inspection report does not comply with the requirements of Section 20 of the Residential Tenancy Regulation.

The Landlords seek a monetary award for unpaid utilities in the amount of $119.96. The Landlords testified that on July 8, 2009, the Tenant signed a "house agreement" with the upstairs occupants. The upstairs occupants signed the agreement on August 6, 2009. A copy of the house agreement was entered in evidence.

The house agreement stipulates that the Tenant pay the two upstairs occupants a utility deposit of $100.00, and pay her share of utilities which would be divided equally between the number of people using the utilities. Cable and internet charges were included in the utilities. The Landlords testified that the Tenant paid the $100.00 utility deposit directly to the upstairs occupants on August 6, 2009. The upstairs occupants moved out of the upstairs suite on September 30, 2009, and provided the Tenant's $100.00 utility deposit to the Landlords. The Landlords provided copies of utility bills in evidence, together with an accounting of the amount the Landlords allege the Tenant owes the Landlord for utilities.

The Tenant questioned the validity of the utility bills. She stated that she was provided with copies of two cable bills for the same billing period, for different amounts, and with no indication of who the bills were sent to. The Tenant testified that she called the cable provider and was advised that the cable rate for the rental property was $39.20 per month, and not the $46.95 the Landlords are claiming.

The Tenant testified that the upstairs occupants provided her with copies of utility bills which included a period of time when she was not living in the rental unit. She stated that the hydro bills were based on equal monthly payments calculated on an estimate of power usage over a year. The Tenant testified that she was not living in the rental unit over the coldest months of the year, and therefore expecting her to pay 1/3 of the estimated hydro payments was unfair.

The Tenant disputes the Landlords' claim that she is responsible for paying 1/3 of the water bills. The Tenant submitted that the upstairs occupants advised her that the Landlord was responsible for paying the water bills.

The Landlords submitted that water bills were utility bills and were not included in the monthly rent.

At a previous Dispute Resolution Hearing on October 6, 2009, the parties came to a Settlement Agreement that the tenancy would end at 1:00 p.m. on November 30, 2009. A further term of the Settlement Agreement was that the Tenant "will use her best efforts to vacate the unit earlier, if so will give the landlords notice in writing immediately

upon securing a new location, and will only be responsible for rent up to the date she vacates this rental unit". The Landlords seek compensation in the amount of $387.50 for loss of rental income, arising from the Tenant's alleged breach of the term that the Tenant provide the Landlords "with notice in writing immediately upon securing a new location". The Landlords submit that the Tenant secured alternate accommodation on October 13, 2009 (the date the Tenant's security deposit cheque was cashed by her new landlord), but did not provide the Landlords with sufficient written notice of that fact until October 25, 2009. The Landlords stated that the Tenant provided them with an e-mail on October 20, 2009, advising that she would be moving out by October 31, 2009, but that they did not trust the Tenant to do so, and did not feel they could re-rent the rental unit until they had notice that complied with the provisions of Section 52 of the Act. The Landlords submit that this delay resulted in a loss to the Landlords because they could not re-rent the rental unit for November 1, 2009. The Landlords testified that they had agreed to rent the rental unit to a subsequent tenant effective December 1, 2009, but that the subsequent tenant agreed to move into the rental unit earlier if the Landlords provided her compensation equivalent to one half of one month's rent. The Landlords submitted that they mitigated their loss to the best of their ability and that the Tenant should reimburse them $387.50 (1/2 of one month's rent) for failing to abide by the terms of the Settlement Agreement.

The Tenant testified that she signed the tenancy agreement with her new landlord on October 20, 2009, and advised the Landlords on the same date, via e-mail. The Tenant testified that when the Landlord requested the notice be "in writing", she provided the Landlord with written confirmation on October 25, 2009. The Tenant submitted that the cashing of the security deposit by her new landlord (October 13, 2009) did not constitute securing the tenancy and that the date she signed the tenancy agreement (October 20, 2009) was the date she secured new accommodation. She submitted that the Settlement Agreement terms did not specify that she had to give formal written notice and that the Landlords had already established, through previous communications, that they were happy to conduct business by way of e-mails.

The Landlords testified that the Tenant damaged a lock, by removing it from the exterior door, installing another lock in its place, and then re-installing the lock in the exterior door before moving out of the rental unit. The Landlords submitted that this caused the lock to become defective. The Landlords seek compensation in the amount of $36.95 for replacing the defective lock.

The Tenant testified that the lock was not working properly when she moved into the rental unit and that she should not be responsible for the cost of replacing it. The Tenant submitted that removing a lock from one door and reinstalling it on another would not cause binding of the deadbolt because the deadbolt and its latch plate are machined and assembled to be in alignment with each other.

The Landlords stated that the Tenant did not make the Landlords aware during the tenancy that the lock was faulty, contrary to Section 32(3) of the Act. The Landlords testified that the tenant who lived in the rental unit prior to July 31, 2009, confirmed that the lock was working well when she moved out. The Landlords provided a letter in evidence from the previous tenant.

The Tenant responded that the previous tenant's letter should not be relied upon because the previous tenant and she did not get along.

The Landlords testified that the Tenant had a dog and that the carpets were dirty and full of dog hair at the end of the tenancy. The Landlords seek a monetary award in the amount of $150.00 which they estimate to be the cost for shampooing the carpet. The Landlords provided two invoices for the cost of carpet shampooing of the rental unit. The Landlords provided in evidence photocopies of photographs of a lint brush they allege was rolled over the carpet when they inspected the rental unit at the end of the tenancy.

The Tenant testified that she hired a professional to shampoo the carpet on October 27, 2009, but did not remember the name of the company she engaged and had misplaced the receipt. The Tenant stated that the carpets were not shampooed before the subsequent tenant moved in, and have not been shampooed to date and therefore the Landlords have incurred no loss. The Tenant questioned whether the debris depicted on the lint brush was dog hair, or hair from a sweater or other source.

The Landlords responded that the subsequent tenant did not believe the carpets were clean at the beginning of her tenancy, but was content to wait for my ruling with respect to whether or not the carpets were left reasonably clean at the end of the Tenant's tenancy. The Landlords stated that if I award them the cost of shampooing the carpets, they will shampoo the carpets for the new tenant. Otherwise, they will use my decision to submit that the carpets were sufficiently clean at the beginning of the new tenant's tenancy.

Analysis

It is important to note that these Hearings were challenged by the degree of animosity and mistrust between the parties. During the Hearings of this matter, both parties voiced concern with respect to procedural fairness. The Landlords were concerned that the Tenant was introducing new evidence after the Hearing had begun. The Tenant was concerned that she would not be afforded an opportunity to provide me with a full explanation of her version of events and response to the Landlords' submissions.

Both parties gave affirmed testimony at the Hearings and were provided ample opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. Both parties were

cautioned at the Hearing on April 21, 2010, that no new evidence would be considered. In my Interim Decision issued June 17, 2010, the parties were directed to provide their written submissions to me and to each other by 4:30 p.m. Pacific Time, July 2, 2010.

The Landlords' final written submissions were not faxed to the Residential Tenancy Branch until 4:54 p.m. on July 2, 2010. The original copy of the Landlords' written submissions was received by the Residential Tenancy Branch on July 5, 2010. Therefore, the Landlords' written submissions have not been considered as they were not provided to the Residential Tenancy Branch within the timeframe set out in my Interim Decision of June 17, 2010. The Tenant provided her written submission to the Residential Tenancy Branch on June 22, 2010.

The Tenant's written submission consisted of a hard copy of her oral testimony (11 ½ pages) from the Hearings, along with a note that she was concerned she would not have an opportunity to respond to the Landlord's final submissions. At the Hearing on April 21, 2009, the Landlords submitted a hard copy of their oral submissions (17 ½ pages). The Landlords stated that they were not "evidence", but were provided to me so that I would not have to make notes during the Hearing. Upon determination that the Landlords had not provided a copy of their submissions to the Tenant, I ordered that they do so because the submissions were lengthy and included quotes from case law. I found it to be necessary for the Tenant to receive a copy in order for the Tenant to have an opportunity to review the submissions and prepare her reply. It is important to note that the Tenant did not provide me, or the Landlord, with a hard copy of her submissions prior to June 22, 2010. Therefore, I have not considered the Tenant's written submissions, as the Landlords were not afforded the opportunity to review them and provide their response. I have referred to my notes with respect to the Tenant's submissions.

Was there a tenancy agreement between the Landlords and the Tenant?

Section 13(1) of the Act requires a landlord to prepare in writing every tenancy agreement entered into after January 1, 2004. The Landlords did not comply with Section 13(1) of the Act with respect to this tenancy. However, Section 1 of the Act defines "tenancy agreement" as follows:

> **"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

I find that the Landlords and the Tenant had an oral tenancy agreement, based on the definition of "tenancy agreement" found in Section 1 of the Act.

Are the Landlords entitled to a Monetary Order against the Tenant for unpaid utilities?

The Tenant entered into a "house agreement" with the upstairs occupants, which set out certain terms of her tenancy including the payment of utilities. The Tenant gave the upstairs occupants a "utility deposit" of $100.00. Therefore, prior to the date the upstairs occupants moved out (September 30, 2010), I find that the Tenant's agreement with respect to the payment of utilities was with the upstairs occupants and not the Landlords. The Landlords' claim with respect to the Tenant's portion of the cable bills is for the time period prior to September 30, 2009. Upon moving out, the upstairs occupants provided the Landlords with the Tenant's "utility deposit", and I leave it up to the Landlords whether or not they wish to apply that deposit towards the Tenant's share of utilities incurred prior to September 30, 2009. If the Tenant feels she has a claim against the utility deposit, her remedy is to take it up with the upstairs occupants.

It is the Applicant's responsibility to establish their claim. In this case the Applicant is the Landlords. There was no written tenancy agreement between the parties which would indicate what utilities were, or were not, included in the rent. The Tenant disputes that she was responsible for the water bills. Verbal agreements may be enforced, but if the parties do not agree on the terms of the agreement, it is unlikely that the Applicant (the Landlords) will prevail without sufficient evidence to support their claim. I find that the Landlords provided insufficient evidence to support their claim that the Tenant was responsible for paying 1/3 of the water bills and dismiss the Landlord's claim with respect to this portion of their claim.

The portion that remains of the Landlord's claim for unpaid utilities is the hydro and gas bills for the period of October 1, 2009 to October 31, 2009. The Tenant agreed that she was responsible for paying her share of hydro and gas bills.

The hydro bills provided in evidence indicate a total usage of $201.60 for the period of September 4, 2009 to November 12, 2009. I find that the Landlord is entitled to 1/3 of the cost of this utility for the period of October 1, 2009 to October 31, 2009 (31 days). I find this amount to be $29.76, calculated as follows:

Per diem: $201.60/70 days = $2.88 per day

Month of October: $2.88 x 31 days = $89.28

Tenant's share: $89.28/ 3 = $29.76

The gas bills provided in evidence indicate that the equal monthly payment plan was no longer in effect for the period of October 1 to October 31, 2009, and the bills reflected the actual usage. The cost of gas decreased on October 1, 2009. The bill for the period of September 16, 2009 to October 16, 2009 indicates the cost of gas from October 1 to 16, 2009 was $15.35; delivery charges were $23.02, and other charges/taxes totaled $7.26. The bill for the period of October 16, 2009 to November 17, 2009 indicates the cost of gas to be $52.18. Delivery charges were $36.44, and other charges/ taxes totaled $14.57. I find the Tenant's share of the gas bill, to be $26.82, calculated as follows:

Cost of gas (October 1 to 16):	$15.35/3 =	$5.12
Cost of gas (October 17 to 31):		
Per diem: $52.18/32 days = $1.63		
15 days x $1.63 = $24.45		
Tenant's share: $24.45/3 =		$8.15
Delivery charges (average of 2 amounts)		
Tenant's share: $29.73/3 =		$9.91
Other charges (average of 2 amounts)		
Tenant's share: $10.92/3 =		$3.64
TOTAL:		$26.82
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Are the Landlords entitled to a Monetary Order against the Tenant for loss of rental income?

On October 6, 2009, the terms of the Settlement Agreement with respect to the end of tenancy were noted by the Dispute Resolution Officer as follows:

Settlement:

The parties settled this matter and I have recorded the agreement pursuant to section 63(2) as follows:

a) The parties have agreed to end the tenancy effective November 30, 2009 at 1:00 PM,

b) The tenant will use her best efforts to vacate the unit earlier, if so will give the landlords notice in writing immediately upon securing a new location, and will only be responsible for rent up to the date she vacates this rental unit,

On October 21, 2009, the Residential Tenancy Branch received an application by the Landlords for a clarification and correction of the Dispute Resolution Officer's Decision dated October 6, 2009, which contained the Settlement Agreement. The Dispute Resolution Officer wrote in reply to the Landlords' application:

> The decision of October 6, 2009 was a recordation of a settlement reached between the parties as to **only,** the end of the tenancy and whether the tenant was owed any compensation for the loss of use of a portion of the unit. The settlement was not determinative of when the tenancy began, the amount of rent, utilities, or exactly how much notice the tenant need to give to the landlords in every circumstance. The landlords are free to pursue whatever remedies are available under the Act as against the tenant for unpaid utilities and whether the notice by the tenant was unreasonable or insufficient and thereby caused a financial loss to them.

The Dispute Resolution Officer recorded the terms of the Settlement Agreement **as they were agreed to between the parties** at the Hearing on October 6, 2009. **The parties did not stipulate whether the "notice" had to be in writing, or in compliance with Section 52 of the Act.**

The Landlords seek to apply the Act strictly, despite the fact that there was no written tenancy agreement between the parties, contrary to Section 13(1) of the Act, and no Condition Inspection Report was completed at the beginning of the tenancy that

complied with the provisions of Section 20 of the Residential Tenancy Regulation, both of which are required by the Act and are the responsibility of the Landlords. If one were to apply the Act strictly, the Tenant could not have provided Notice to end the tenancy without 30 days notice. The Dispute Resolution Officer recorded an additional term of the Settlement Agreement that the Tenant would "only be responsible for rent up to the date she vacates this rental unit." Therefore, I do not accept the Landlords' submission that the Tenant did not provide the Landlords with sufficient notice, or that the Tenant should be responsible for compensating the Landlords for loss of rent after the Tenant vacated the rental unit on October 31, 2009. This portion of the Landlords' application is dismissed.

Are the Landlords entitled to a Monetary Order against the Tenant for compensation for a damaged lock?

The evidence shows that the lock was defective during the Tenant's tenancy and therefore the Tenant replaced it. The evidence further shows that the Tenant did not advise the Landlord that the lock was defective. The Landlords provided a copy of the receipt for the cost of replacing the lock. Based on the testimony of both parties and the documentary evidence of the Landlords (the letter of the previous tenant attesting that the lock was in good working order at the end of her tenancy), I find that the Landlords have established their monetary claim with respect to this issue and award the Landlords' the amount of $36.95 for the cost of replacing the defective lock.

Are the Landlords entitled to a Monetary Order against the Tenant for compensation for shampooing the carpet?

With respect to shampooing carpets at the end of a tenancy, the Residential Tenancy Policy Guidelines state:

> **CARPETS**
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> 1 At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
> 2 The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
> 3 The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a

> tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
> The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The Tenant testified that she had the carpets cleaned by a professional on October 27, 2009 (four days before vacating the rental unit). The Tenant had a dog. The tenant who moved into the rental unit immediately after the Tenant moved out provided a letter which stated, in part:

> "Oct. 31st, 2009- During the Conditions Inspection on moving in it was noted on the report that carpet did not appear to have been cleaned. In particular it had an excessive amount of dog hairs & dirt."

The Tenant could not provide documentary evidence with respect to her claim that the carpets had been shampooed by a professional.

The Landlords provided photocopies of photographs depicting a lint roller imbedded with what appears to be hair and dirt. The Landlords provided copies of two carpet cleaning bills for the rental unit, one from June 27, 2008 in the amount of $158.25, and the other from June 29, 2009, in the amount of $154.35.

I find that the Landlords have proven their claim on the balance of probabilities, and award the Landlords the amount claimed of $150.00 for the cost of shampooing the carpets.

Calculation of monetary award for the Landlords

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

The Landlords have established a monetary award, calculated as follows:

Tenant's share of hydro bill for October 1 to 31, 2009	$29.76
Tenant's share of gas bill for October 1 to 31, 2009	$26.82
Cost of replacing lock	$36.95
Estimated cost for shampooing the carpets	$150.00
Recovery of the filing fee	$50.00
TOTAL MONETARY AWARD	$293.53

During the Hearing, the Landlords submitted that they were not able to apply the security deposit towards damages because of the provisions of Section 38(5) of the Act,

which precludes landlords from making application against the security deposit for damages to the rental unit if the Landlords do not perform Condition Inspection Reports that comply with Sections 24 and 36 of the Act. The Landlords suggested that the award for the broken lock could be provided in the form of a Monetary Order which could be enforced in Small Claims Court, and the remainder could be deducted from the security deposit and pet damage deposit being held by the Landlord.

This is a dispute resolution process which is intended to resolve disputes between parties. I can see no logic in deducting a portion only of the Landlords' monetary award from the security deposit being held by the Landlords, ordering the Landlords to return the remaining security and pet damage deposits to the Tenant, and then providing the Landlords with a Monetary Award against the Tenant for the balance of the Landlords' monetary award. Section 72 of the Act states:

> **Director's orders: fees and monetary orders**
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> **72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
>
> (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
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> (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
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> (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Therefore, in accordance with the provisions of Section 72(2)(b) of the Act, the Landlords may deduct their monetary award from the security deposit. No interest has accrued on the deposits. I order the Landlord to provide the Tenant with the balance of the security and pet deposits within 15 days of receipt of this Decision. This amount is calculated as follows:

Security deposits held by the Landlords	$775.00
Less Landlords' monetary award	-$293.53
Amount owing to Tenant	$481.47

I hereby provide the Tenant with a Monetary Order in the amount of $481.47 against the Landlords.

Conclusion

The Landlords have been partially successful in their application and are awarded the amount of $293.53 against the Tenant.

The Landlords may deduct their award from the security deposit held in trust for the Tenant.

The balance of the security deposit together with the pet damage deposit is to be returned to the Tenant within 15 days of receipt of this Decision.

I hereby provide the Tenant with a Monetary Order in the amount of $481.47 against the Landlords. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims 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: July 19, 2010.