

## **DECISION**

Dispute Codes      MNND, MND, MNR, MNND, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed on the following facts. The tenancy began in or about November 1, 2008 and ended on February 15, 2010. Rent was \$850.00 per month and the landlord collected a \$425.00 pet deposit and a \$425.00 security deposit. At the end of the tenancy the tenant agreed in writing that the landlord could retain the pet deposit for rent for February 1-15. The rental unit was located in the basement of a home in which the upper floor was occupied by other tenants. The tenant was obligated to pay 1/3 of the utilities for the property. On January 4, 2010 the landlord served the tenant with a one month notice to end tenancy which listed an effective date of January 15, 2010. The tenant gave the landlord his forwarding address in writing on February 25, 2010. The landlord did not return the security deposit to the tenant.

The tenant testified that in January the utilities to the unit were cut off and the tenant had to arrange for utilities to be placed in his own name in order to have continued service. The tenant entered into evidence a Terasen Gas invoice for \$164.57 for service from January – February 2010. The tenant further entered into evidence a BC Hydro invoice \$132.23 for service for the same period. The tenant seeks to recover 2/3

of the amount of each invoice. The landlord testified that it was due to the actions of the tenant that the tenants who occupied the upper unit vacated and argued that the tenants should therefore be responsible for all of the utility charges.

The landlord testified that the tenants failed to pay rent in the month of February and while he acknowledged having received the pet deposit in partial payment, seeks to recover unpaid rent for the remainder of the month. The tenant testified that he understood that although the notice to end tenancy stated that it was effective on January 15, the tenant knew he was entitled to one month notice and thought the tenancy would end on February 15 rather than January 15.

The landlord presented a Terasen Gas invoice for the period from July - October 2009 for \$606.21 and seeks to recover 1/3 of that invoice. The tenant acknowledged that while he knew he was responsible to pay 1/3 of the utilities, he was not presented with invoices during the tenancy. The tenant objected to paying 1/3 of the invoice as the invoice included \$350.00 for the security deposit and a \$25.00 application fee. The landlord presented another Terasen Gas final notice of payment dated August 7, 2009. The parties agreed that this bill represented the gas payable during the time a different tenant lived in the upper suite. The notice of final payment includes at least one late payment charge of \$12.24 and gives \$828.41 as the total owing. The tenant argued that the bill is in the name of the previous tenant and that he does not know whether the landlord paid any monies to the previous tenant or whether the landlord paid Terasen Gas directly. The landlord also presented a BC Hydro Invoice dated September 29, 2009 for a total of \$286.98. This bill too is in the name of the previous tenant and the parties agreed that the bill represented the hydro payable during the time that previous tenant lived in the upper suite.

The parties agreed that in late 2009 the landlord supplied a new refrigerator to the rental unit. The landlord provided a photograph showing that a shelf in the refrigerator was broken at the end of the tenancy as well as an invoice showing that it cost him \$80.64 to replace the shelf. The tenant did not dispute that the shelf was broken at the end of the tenancy.

The landlord testified that the carpet was approximately 1 ½ years old at the start of the tenancy and that at the end of the tenancy there were multiple stains and cigarette burns. The tenant testified that the carpet was stained at the beginning of the tenancy and pointed out that the landlord did not perform a condition inspection of the rental unit either at the beginning or the end of the tenancy. The landlord testified that it cost him \$200.00 to purchase a new carpet and install it himself. The landlord provided no invoices to support his claim.

The landlord testified that the tenant caused damage to a blind that was approximately 3 years old at the start of the tenancy. The tenant testified that the blinds were so yellowed from nicotine that he bleached the blinds and testified that after having bleached them, they began to disintegrate. The landlord estimated that it would cost him \$25.00 to replace the blind.

The landlord testified that at the end of the tenancy the walls of the unit were so badly stained with nicotine and smelled so strongly of smoke that they had to be repainted. The landlord testified that he had last repainted the rental unit in late 2007. The tenant testified that he was sure the rental unit had not been painted for at least 2 ½ years prior to the time he moved in and argued that the landlord permitted him to smoke in the unit.

### Analysis

First addressing the tenant's claim, section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address on February 25 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$425.00 and is obligated under section 38 to return this amount together with the \$1.15 in interest which has accrued to the

date of this judgment. The amount that is doubled is the base amount of the deposit. I award the tenant \$851.15.

I find that the tenancy agreement required the tenant to pay just 1/3 of the utilities for the residential property. The agreement does not require the tenant to pay a higher rate if the upper unit is vacant. I find that the tenant is entitled to recover \$108.62 which represents 2/3 of the Terasen Gas invoice and \$87.27 which represents 2/3 of the BC Hydro invoice. I award the tenant \$195.89.

Turning to the landlord's claim, I find that section 53(1) operates to change the effective date of the notice to end tenancy to February 28, 2010. I find that the tenant was obligated to pay rent throughout the entire month of February and that the retention of the pet deposit only met half of the tenant's obligation for rent for that month. I award the landlord \$425.00 which represents rent payable for the period from February 16 – 28.

I find that the tenant was obligated to pay 1/3 of the utilities throughout the tenancy. I do not accept the tenant's argument that no monies are payable as the landlord has not proven that he paid the outstanding bill to the tenants who previously resided on the upper floor. This is a debt for which the landlord would be contractually obligated should those tenants choose to pursue him and the landlord has the right to recover these monies from the tenant. I find that the tenant should not be responsible for the security deposit or application fee for the Terasen Gas invoice for the period from July - October 2009. I award the landlord 1/3 of the balance of that invoice, which is \$77.07. I find that the tenant is responsible for 1/3 of the Terasen Gas invoice for the period prior to the most recent tenancy in the upper unit as represented in the final notice of payment dated August 7, 2009. I find that the tenant cannot be held responsible for any late charges and as the bill is not detailed or broken down to show which charges are late charges and which are other charges, I find that an arbitrary discount of 15% of the bill is appropriate. The bill demanded payment of \$828.41. After applying a 15% discount the total is \$704.15. I find that the tenant is responsible for 1/3 of that bill and I award the landlord \$234.72. I find that the tenant is obligated to pay for 1/3 of the

utilities consumed for the period represented by the BC Hydro Invoice dated September 29, 2009 for a total of \$286.98. I award the landlord \$95.66 which represents 1/3 of that invoice. The landlord is awarded a total of \$311.79 for utilities.

I award the landlord \$80.64 as the cost of replacing the broken refrigerator shelf as there was no dispute that the tenant was responsible for the damage.

I dismiss the landlord's claims for damage to the carpet and blind as I find that the landlord has not proven that the carpet and blind were in good condition at the start of the tenancy.

I find that the tenant having smoked within the rental unit caused damage to the interior paint. Although the landlord may have permitted the tenant to smoke in the unit, this does not excuse the tenant from liability for any damage resulting from smoking. I accept the landlord's testimony that the rental unit was last painted in late 2007 and I further accept that it cost the landlord \$350.00 to repaint the unit, which I find to be an extremely reasonable cost. Residential Tenancy Policy Guideline #37 identifies the useful life of interior paint as 4 years. I find that the tenant deprived the landlord of approximately half a year, or 1/8 of the useful life of the paint and accordingly I find that the tenant is responsible for 1/8 of the cost of painting. I award the landlord \$37.50.

I find that as the landlord has been successful in part of his claim, he is entitled to recover the \$50.00 filing fee paid to bring his application. I award the landlord \$50.00.

### Conclusion

The tenant has been awarded a total of \$1,047.04 which represents the double security deposit, interest and utilities and the landlord has been awarded a total of \$904.93 which represents unpaid rent, utilities, refrigerator repairs, painting costs and the filing fee. Setting off these awards as against each other leaves a balance of \$142.11 payable by the landlord to the tenant. I grant the tenant a monetary order under section 67 for \$142.11. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: July 21, 2010

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Dispute Resolution Officer