

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the). Both parties applied for a monetary award for damage or loss under section 67, for the recovery of the filing fee for their applications pursuant to section 72, and for authorization to retain or have returned the tenants' security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed that they were served with each other's applications by registered mail. I accept that the parties have been duly served with the applications for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for overpayment of utility bills and rent for services/facilities committed to but not provided by the landlords and for lost business due to unavailability of the "shop" portion of the premises? Are the tenants entitled to return of their security and pet deposits? Are the tenants entitled to recover the filing fee for their application?

Are the landlords entitled to a monetary order for damage caused to the rental premises, to retain the tenants' security and pet deposits, and to recover the filing fee for their application?

Background and Evidence

Although a draft tenancy agreement was entered into evidence, the parties agreed that no tenancy agreement was signed. The tenants commenced paying rent of \$1,500.00 per month on August 1, 2009. A security deposit of \$750.00 and a pet deposit of \$250.00 were paid by the tenants during mid-August 2009. The female landlord (the landlord) testified that she continues to hold those deposits plus interest. The tenant entered into evidence a copy of the advertisement for the rental premises which noted the monthly rent at \$1,500.00. The advertisement indicated that the 2,400 square foot shop could be included in the rental if the renter paid \$2,400.00 for both the rental premises and the shop. The tenants did not lease the shop and paid only \$1,500.00 per month.

The tenants commenced paying rent on August 1, 2009, but did not move into the rental premises until October 18, 2009. The male tenant (the tenant) testified that the premises were not ready for occupancy at that time. He testified that he could have been able to move into these premises earlier had the sale of his property in another province been completed in a more timely fashion. He testified that he saw the property for the first time when he moved into the rental premises on October 18, 2009. Until then, he had based his rental of the premises on the inspections of the property conducted by his brother and sister-in-law.

Tenants' Application

Background and Evidence

The tenant applied for a monetary award of five months of "lost business" at \$1,500.00 per month, for a total of \$7,500.00. He maintained that he rented the premises on the understanding that the landlord would complete the shop area and provide wiring in that area so that he could use it for his work area. He testified that this did not occur and that he was unable to use this area in the basement for his work.

The tenant also requested a monetary award for the first two months he rented the premises (i.e., August and September 2009) because the rental premises were not ready at that time as promised by the landlord.

The tenant also applied for a monetary award of \$572.00, the difference between the landlord's \$150.00 per month estimate for hydro and the two month charge of \$872.00 he was charged for hydro. He also requested return of the security and pet deposits, as well as the recovery of his filing fee.

Analysis

Both the landlords and the tenant testified that the tenant did not rent the shop area and paid \$1,500.00 in rent for that part of the property that excluded the shop area. The landlord testified that the tenants were allowed to store some of their equipment in the shop area. However, there is no evidence that the lease of this property included use of the shop area for the tenant's work. As such, I dismiss the tenants' application for a monetary award for lost business.

The tenant testified that he did not see the rental premises until October 18, 2009, when he moved to the property. He did not dispute the landlord's testimony that he was unable to move to the rental premises until that time because of delays in completing the sale of his property. The tenant had no first-hand knowledge of the condition of the rental premises in August or September 2009, the months he claimed the property was unfit for occupancy. The tenant could only speak to the condition of the property on October 18, 2009, when he moved there. The landlord testified that the property was ready for rental in August 2009, and provided photographs that she maintained demonstrated the state of the premises at that time. I deny the tenants' claim for a monetary award for August and September 2009, as the tenants provided insufficient evidence to demonstrate that the rental premises were unfit for occupancy during those months.

The tenant provided insufficient evidence to warrant a monetary award relating to the landlord's estimate of the monthly hydro bill. As the tenant appears to have been responsible for the payment of utilities for the rental premises, there is no mechanism to place a ceiling on the amount of this liability. I dismiss the tenants' application for this monetary award.

Since the tenants were unsuccessful in their application, I deny their request for recovery of the filing fee for their application.

Landlord's Application

Background and Evidence

The landlord applied for a monetary award for the following:

Item Requested	Amount
Tenant's Use of Landlord's Wood (5 cords @ \$150.00 per cord)	\$750.00
Unpaid Water Tolls/Garbage/Recycling Fees	183.60
Cleaning of Premises (12 hours @ 10.00 per hour)	120.00
Repair Damaged Walls/Floors in Bsmt	500.00
Carpet Damage in Basement Living Room	400.00
Carpet Cleaning due to animals in home	250.00
Keys	8.07
Cleaning of Outside Yard	300.00
Supplies and Clean-up rentals	200.00
Recovery of Filing Fee for this application	50.00

The landlord asked for a monetary award of \$750.00 to reflect the tenants' unauthorized use of five cords of the landlord's wood at a cost of \$150.00 per cord. The landlord said that the tenant was allowed to use some of the wood as an alternative fuel source during a short period in November 2009 when the furnace was not functioning properly. The landlord testified that this was over a two or three-day period. She estimated that the tenants may have used one-quarter of the wood during the period before the landlords clearly advised them to discontinue using the landlord's wood. The landlord

entered into testimony a December 15, 2009 letter to the tenants advising them that they did not have permission to use the landlord's stack of cut wood. The male landlord estimated that there would have been approximately six to seven cords of wood when the tenant moved into the rental premises, and that very little of that wood remained after the tenant vacated. The landlords submitted into evidence photographs of the landlord's wood pile before and after the tenancy. The tenant testified that the male tenant had given him permission to use the landlord's wood when the tenants encountered difficulties with the furnace in the rental premises.

The landlord requested a monetary award for water tolls charged by the Improvement District, as well as a garbage and recycling fee charged by the Regional District.

The landlord presented a copy of the December 18, 2009 move-in condition inspection report. The landlord said that this inspection was not conducted when the tenants moved in on October 18, 2009 because the tenants arrived at the rental premises earlier than they said they would and moved their belongings into the rental premises before a joint move-in inspection could be conducted. The landlord testified that she had cleaned much of the premises before the tenants arrived, but that she left the cleaning of some of the upper floor until the morning she was expecting the tenants to arrive. She said that there was a trailer of garbage and excess materials in a trailer at the front of the lot which she was intending to remove when the cleaning of the property was completed the following morning.

The tenant provided evidence that the rental premises were very dirty when he arrived on October 18, 2009. He said that he had to clean the premises thoroughly.

The landlord submitted a copy of the March 31, 2010 move-out condition inspection report which she conducted herself because the tenants did not attend at the appointed time. She testified that there was considerable damage to the rental premises and that she spent 12 hours cleaning the property. She submitted evidence including photographs to support her assertion that the tenants damaged the walls, the floors in

the basement, burnt a hole in a carpet in the basement and that another carpet needed cleaning from animal damage. She said that she spent \$300.00 in hiring workers to clean the dog feces and other material from the yard. She testified that the tenant left the wrong keys for the property and these had to be replaced.

The tenant said that the landlord did not arrive at the appointed time for the move-out inspection and that the tenants left after waiting for the landlord. He maintained that the rental premises were not in good condition than when he first occupied the property. Both parties provided photographs to support their requests for access to the security deposit and monetary awards.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant, in this case the landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept that the landlords have provided sufficient evidence to demonstrate that they incurred considerable costs in restoring this property to a state where it could be rented after the tenants vacated the property. For that reason, I issue a monetary order in the landlords' favour for damage and loss caused by the tenants during the course of the tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I authorize the landlord to retain the security and pet deposits plus interest in partial satisfaction of this monetary award. No interest is payable over this period. Since the landlords' application has been successful, I authorize the landlords to recover their filing fee for this application.

In considering the photographic evidence submitted by the parties, questions were raised by the landlord regarding the credibility of the tenants' photographic evidence. The timing of the photographs is important as there is a distinct difference between the landlords' evidence and the tenants' evidence regarding the state of the rental premises during this tenancy. At one point, the tenant testified that he and his wife took all of the photographs the tenants submitted into evidence. However, the tenant revised this testimony and said that his sister-in-law took some of the photographs when it was noted that some of these photographs were taken at least one month before he and his wife first viewed the property. The landlord testified that some of the photographs must have also been taken by the tenant's brother in June 2009, as the landlord was included in one of the photographs. She recalled the tenant's brother taking the photograph at that time. She asserted that the photographs submitted by the tenants misrepresented the condition of the rental premises prior to the tenants' occupancy of the premises. In considering the photographic evidence submitted by the parties, I give more weight to the landlords' photographs as no credibility issues were raised or seem apparent with respect to this evidence as opposed to that of the tenant.

By December 15, 2009, the landlord had clearly advised the tenants to discontinue using the landlord's wood. As the landlord's estimate of the amount of wood used by the tenants prior to clear direction being provided to them on December 15, 2009 may be inaccurate, I accept that the tenant was authorized to use some of the landlord's wood prior to December 15, 2009. I find that the landlord is entitled to a monetary award for the cash equivalent of 75% of the landlord's estimate of 6.5 cords of wood. This results in a monetary award of \$731.25 (i.e., 4.875 cords of wood at a rate of \$150.00 per cord).

In the absence of a signed residential tenancy agreement, I am not satisfied that the landlord's monetary order should include water tolls and the garbage and recycling fee claimed by the landlord. Although the tenant did not dispute the landlord's sworn testimony that the tenants were responsible for utility charges, the landlord has not provided evidence to demonstrate to the extent necessary that the tenant was

responsible for the water tolls, and garbage and recycling fees claimed by the landlord. For this reason, I do not include the landlord's application for \$183.60 for these tolls and fees in the monetary order.

Although move-in and move-out condition inspection reports were completed for this tenancy, the circumstances surrounding these reports makes it difficult to attach weight to them. The move-in inspection report was attended by both the tenants and the landlord, but did not occur until the tenants had been living in the unit for two months. The landlord had the opportunity to conduct a move-in condition inspection report much earlier than December 19, 2009. The move-out condition inspection report was completed by the landlord without the tenants' participation. There is conflicting evidence regarding whether the landlord was late in attending the inspection or whether the tenants left early.

I find that the premises were neither clean when the tenants moved into the rental premises nor when they vacated the premises. Without a more timely move-in condition inspection report, I cannot compare the state of cleanliness of the rental premises on October 18, 2009 with that of March 31, 2010, when the tenants vacated the rental premises. For that reason, I dismiss the landlord's claim for \$120.00 in cleaning costs. However, I add the landlord's \$32.99 for cleaning the carpets (\$12.99 for 1 jug of cleaner and 2 hours of the landlord's time at \$10.00 per hour) to the \$250.00 bill the landlord claimed for cleaning those carpets that were damaged by pets in the rental premises.

The tenant has not been successful in disputing the other costs related to damage caused during the course of the tenancy. The landlord testified that there was dog feces left in the yard, which was not apparent in even the tenants' earlier photographs of the property. The landlord testified that the tenants caused damage to the walls, floors and carpet in the basement.

I accept that the tenants were responsible for a burnt section of carpet in the basement living room. I include an allowance of \$200.00, rather than the \$400.00 submitted by the landlord, in my monetary order for this item. I make this finding because I am not satisfied by the landlords' evidence that the damage exceeded \$200.00.

Conclusion

I dismiss the tenants' application for the reasons outlined above. I make an Order in favour of the landlord as follows:

Item	Amount
Tenant's Use of Landlord's Wood	\$731.25
Carpet Cleaning	32.99
Repair Damaged Walls/Floors in Basement	500.00
Carpet Damage in Basement Living Room	200.00
Carpet Cleaning (\$32.99 + 250.00)	282.99
Keys	8.07
Cleaning of Outside Yard	300.00
Supplies and Clean-up rentals	200.00
Less Retention of Security & Pet Deposits Plus Interest (\$750.00 + \$250.00)	-1,000.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,305.30

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.

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*.