

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, O, FF

Introduction

This hearing dealt with two applications: i) by the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; ii) by the landlords for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / permission to serve documents or evidence in a different way than required by the Act / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on October 1, 2008. Rent in the amount of \$800.00 was payable in advance on the first day of each month. A security deposit of \$400.00 was collected on September 14, 2008. While the parties agree that a walk-through of the unit was completed at the outset of tenancy, a move-in condition inspection report was not completed.

On or about April 7, 2010, the tenant gave verbal notice to the landlord's agent of her intent to vacate the unit effective on or about April 10, 2010. Rent was paid up to the end of April 2010. Subsequently, there was a telephone conversation between the tenant and the landlord's agent which led to the agent's entry to the unit while the tenant was absent. Arising from the agent's concern about the condition of the unit after entering, the agent contacted the tenant. The tenant was upset that the agent had

entered the unit, despite the agent's understanding that the tenant had tacitly agreed to the entry. Thereafter, when the agent returned to the unit on April 17, 2010, she concluded that the unit had effectively been abandoned; the agent then proceeded to change the locks on the unit and undertook to store what appeared to be the tenant's discarded belongings.

The tenant takes the position that she had not abandoned the unit, and had not given the agent permission to access the unit in her absence, even while she had entered into a tenancy agreement with another landlord for another unit commencing in April 2010. The tenant claims that some of her possessions were damaged, and others are missing as a result of the agent's access to the unit and handling of her possessions.

While the agent undertook an inspection of the unit following the alleged abandonment, a move-out condition inspection report was not completed. Evidence submitted by the landlord includes photographs taken in and around the unit after the tenancy had effectively ended. There is no evidence that the tenant provided the landlord with her forwarding address in writing, prior to the time when she included her forwarding address in her application for dispute resolution and served the landlord with a copy of same.

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/

Based on the documentary evidence and testimony of the parties, my findings around each aspect of the respective applications are set out below.

Tenant:

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment.**

Section 29 of the Act addresses **Landlord's right to enter rental unit restricted.**

Section 30 of the Act addresses **Tenant's right of access protected**. Section 31 of the Act addresses **Prohibitions on changes to locks and other access**.

\$6,000.00 claimed: *largely unspecified losses*.

The tenant's application does not include an inventory of items allegedly damaged or missing except for her father's ashes which she claims are missing. Accordingly, neither are there any particular details included in the tenant's application in association with the age, condition or monetary value of any items allegedly damaged or missing. Therefore, in the absence of sufficient evidence, this aspect of the tenant's application is hereby dismissed.

While on or about April 7, 2010 the tenant gave verbal notice of her intent to vacate the unit on or about April 10, 2010, and had rented another unit effective from some point around mid-April, she paid rent to the end of April in the unit which is the subject of this dispute. When she returned to the unit after April 10, she found that the locks had been changed and that the agent and/or others had been inside the unit. There is no evidence that the tenant consented to the entry or that the agent's entry was undertaken following the provision of proper notice. Accordingly, I find that the tenant has established entitlement to **\$50.00*** for a combination of the breach of the right to quiet enjoyment and unauthorized entry into the unit.

Total entitlement: \$50.00*

Landlord:

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**.

\$700.00 claimed: *replace windows in laundry room*. While there is no evidence of a comparative move-in and move-out condition inspection report or receipts in support of purchase, based on the testimony of the parties and the photographic evidence showing damage from mold, I find the landlord has established entitlement limited to **\$50.00***.

\$300.00 claimed: *owner / landlord's labour related to the above.* Following from the above, I find that the landlord has established entitlement to **\$25.00***, calculated on the basis of 1 hour's labour at the rate of \$25.00 per hour.

\$400.00 claimed: *replace drywall.* While there is no evidence of a comparative move-in and move-out condition inspection report or receipts in support of purchase, based on the testimony of the parties and the photographic evidence, I find that the landlord has established entitlement limited to **\$100.00***.

\$400.00 claimed: *owner / landlord's labour related to the above.* Following from the above, I find the landlord has established entitlement to **\$100.00***, calculated on the basis of 4 hours' labour at the rate of \$25.00 per hour.

\$100.00 claimed: *owner / landlord's labour to repair dryer vent.* While there is no evidence of a comparative move-in and move-out condition inspection report, based on the testimony of the parties and the photographic evidence, I find that the landlord has established entitlement to **\$25.00***, calculated on the basis of 1 hour's labour at the rate of \$25.00 per hour.

\$600.00 claimed: *combined cost of materials and owner / landlord's labour to remove damaged sub-floor.* While there is no evidence of a comparative move-in and move-out condition inspection report, no receipts to support any related purchase(s), and limited evidence that this work was required to be undertaken principally as a result of the tenant's actions, as opposed to age of the sub-floor and / or normal wear and tear, based on the testimony of the parties I find that the landlord has established combined overall entitlement limited to **\$100.00***, calculated on the basis of 4 hours' labour at the rate of \$25.00 per hour.

\$1,272.00 claimed: *replace flooring, L/R, kitchen/hall/bathroom.* In the absence of a comparative move-in and move-out condition inspection report, and in view of what appear to have been the landlord's intentions to renovate the unit following the end of tenancy, and in the absence of any receipts to support any related purchase(s), this aspect of the landlord's claim is hereby dismissed.

\$1,500.00 claimed: *owner / landlord's labour related to the above.* For the reasons set out above, this aspect of the claim is also hereby dismissed.

\$380.00 claimed: *cost of hired labour for removal of damaged carpet.* In the absence of a comparative move-in and move-out condition inspection report, or particular information about the age of the carpet, or a receipt in support of payment, this aspect of the claim is hereby dismissed.

\$1,200.00 claimed: *replace fridge and stove.* The landlord testified that the actual cost of replacement was nearer to \$1,400.00. Residential Tenancy Policy Guideline # 37 provides that the useful life of these appliances is 15 years. The landlord testified that at the start of tenancy, the age of the appliances was approximately 2 ½ years. Therefore, by the end of April 2010 when tenancy had ended, these appliances were approximately 4 years old. Accordingly, the remaining life expectancy of these appliances was approximately 11 years.

While the landlord's documentary evidence and testimony addressed the unclean condition of these appliances, there is no conclusive evidence that the appliances did not still function. Further, there is no evidence of receipts in support of purchase. In the result, this aspect of the claim is hereby dismissed.

\$300.00 claimed: *owner / landlord's labour for backyard cleanup.* The tenant did not dispute that there were items left behind which the landlord may have had to clean up and / or dispose of. Based on the testimony of the parties and the photographic evidence, I find that the landlord has established entitlement limited to **\$75.00***, calculated on the basis of 3 hours' labour at a rate of \$25.00 per hour.

\$1,000.00 claimed: *pest removal.* In the absence of sufficient evidence that this service was required exclusively as a direct result of action or inaction on the part of the tenant, and in the absence of a receipt in support of the purchase of the service, based on the testimony of the parties and the documentary evidence, I find the landlord has established entitlement limited to **\$100.00***.

\$162.00 claimed: *septic pumping.* In the absence of sufficient evidence that the septic pumping was required for reasons other than normal use or wear and tear, and in the absence of a receipt for the purchase of the service, this aspect of the claim is hereby dismissed.

\$300.00 claimed: *replace broken window.* This damage appears to have occurred following the landlord's changing of the locks. However, in the absence of sufficient evidence that the tenant was responsible for the damage, and in the absence of receipts in support of the purchase, this aspect of the claim is hereby dismissed.

\$150.00 claimed: *owner / landlord's labour related to the above.* For the reasons set out above, this aspect of the claim is also hereby dismissed.

\$50.00 claimed: *replace kitchen light*. In the absence of sufficient evidence that the need for this replacement arose from actions of the tenant as opposed to normal wear and tear, and in the absence of a receipt in support of the purchase, this aspect of the claim is hereby dismissed.

\$60.00 claimed: *replace weed-eater*. In the absence of any evidence of the age or condition of this equipment at the time it was left at the unit for the tenant's use, or sufficient evidence that the need to replace this equipment arose from anything beyond normal wear and tear, or evidence of a receipt or other relevant documentation in support of the cost of a replacement purchase, this aspect of the claim is hereby dismissed.

\$30.00 claimed: *driveway cleaner*. In the absence of a comparative move-in and move-out condition inspection report or a receipt in support of the purchase, this aspect of the claim is hereby dismissed.

\$100.00 claimed: *filing fee*. As the landlords have achieved limited success in this application, I find they have established entitlement limited to \$50.00*, or half the amount claimed.

Sub-total: \$625.00

I order the landlord to retain the security deposit of \$400.00, plus interest of \$1.51 (total: \$401.51), and I find the landlord has established a net entitlement to a balance owed of \$223.49 (\$625.00 - \$401.51).

Offsetting the claims against each other, I find the landlord has established entitlement to a monetary order in the amount of **\$173.49** (\$223.49 - \$50.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$173.49**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: September 21, 2010

Dispute Resolution Officer