

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

Both the landlord and tenant applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the *Act*), regulation or tenancy agreement pursuant to section 67 of the *Act*. The landlord applied to retain the tenant's security deposit and the tenant applied to recover her security deposit, pursuant to section 38. Both parties also applied to recover their filing fees from the other party pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. They testified that they sent and received the applications for dispute resolution for this hearing. I accept that the parties served one another with the applications for dispute resolution in accordance with the *Act*.

Issues(s) to be Decided

Are either of the parties entitled to monetary orders? Are either of the parties entitled to obtain or retain portions of the tenant's security deposit? Are either of the parties entitled to recover the filing fees for their applications?

Background and Evidence

The landlord testified that the tenant commenced occupying the rental premises on January 1, 2010 as part of a tenancy agreement with her male friend for a six-month period. Rent at that time was set at \$1,200.00 per month. The landlord and the tenant cancelled that tenancy agreement on March 31, 2010 when they signed a new fixed term tenancy commencing on April 1, 2010 and ending on May 31, 2010. The monthly rent under the new tenancy agreement was set at \$900.00 per month. The tenant vacated the premises on May 31, 2010. The landlord testified that he continues to hold the tenant's \$600.00 security deposit paid on January 1, 2010, in accordance with the earlier six month tenancy agreement.

The parties agreed that a joint condition inspection report was prepared and signed by both parties on March 24, 2010. They also agreed that a joint condition inspection was conducted on May 31, 2010 when the tenant vacated the rental unit. The tenant refused to sign the move-out condition inspection report.

On June 7, 2010, the landlord applied for dispute resolution to retain the tenant's security deposit for the following losses or damages incurred during this tenancy.

Item	Amount
Professional Carpet Cleaning	\$126.00
Extra Occupant as per tenancy agreement	100.00
Lawn Maintenance	150.00
Extra Vehicle Storage (\$35.00 per month for 5 months)	175.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$601.00

The tenant's application for a monetary award included the following items:

Item	Amount
Double Security Deposit (\$600.00 x 2 = \$1,200.00)	\$1,200.00
Employer's Cost for attending this hearing	209.00
Cost of Hydro Bill – May 2010	171.01
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$1,630.01

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 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.

Background and Evidence - Carpet Cleaning

The landlord submitted a receipt for \$121.00 for professional carpet cleaning following the end of this tenancy. He testified that the carpet was professionally cleaned in November 2009, shortly before the tenant first moved into the rental premises. He offered no photographic evidence.

The tenant testified that she spent hours shampooing and cleaning the carpet before she vacated the premises. She provided undisputed testimony that the \$121.00 receipt provided by the landlord was from his own carpet cleaning company.

Analysis – Carpet Cleaning

The tenant maintained that neither her tenancy agreement nor the following portion of Residential Tenancy Policy Guideline #1 require her to have her carpets professionally cleaned at the end of a short tenancy such as this one.

CARPETS...

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 held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*
4. *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 landlord referred to Section 23 of the Residential Tenancy Agreement.

23. CARPETS AND WINDOW COVERINGS. The tenant is responsible for periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and

window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy...

The landlord entered undisputed evidence that the tenant's male friend who was a co-tenant in the original tenancy smoked and that there were many cigarette butts found in the flower beds. However, the landlord did not testify that the carpets required professional cleaning to remove the smell of smoke from the carpets. The landlord did not deny the tenant's claim that she shampooed the carpets herself. Rather, he claimed that the tenant did not have the carpets professionally cleaned as required under the Residential Tenancy Agreement.

Despite the short duration of this tenancy, the tenant provided undisputed testimony that she shampooed the carpets in compliance with Section 3 of Residential Tenancy Policy Guideline #1. The landlord has entered insufficient evidence to question the quality of the tenant's efforts to shampoo and clean the carpets, and did not submit evidence or photographs to demonstrate staining or careless damage to the carpets. I am not satisfied that the landlord has provided sufficient evidence to demonstrate that the tenant was required to have the carpets professionally cleaned in this two-month fixed term tenancy. I dismiss the landlord's claim for reimbursement of his costs of professionally cleaning the carpets.

Background and Evidence - Lawn Maintenance

The landlord testified that the tenant did not comply with the "Yard Care" provisions of the Residential Tenancy Agreement Addendum that was attached to her tenancy agreement. In that Addendum, the tenant agreed that "if the tenants do not keep the yard in good condition, the work may be hired, done and charged to the tenant."

The tenant confirmed that she did not mow the lawn during the course of the tenancy. She testified that she asked to use the landlord's lawn mower a number of times, but the landlord denied these requests. She also testified that due to the timing of this tenancy, the landlord's mother's claim for 15 hours of lawn maintenance at \$10.00 per hour was inflated.

Analysis – Lawn Maintenance

Based on the evidence presented, I am satisfied that the tenant did not fulfill the Yard Care provisions of the tenancy agreement. The tenancy agreement does not specify that the landlord was required to loan the tenants lawn mowing or maintenance equipment in order to take care of the yard at the rental premises. However, I accept the tenant's undisputed evidence that the landlord's mother using her riding mower would not have had to spend 15 hours mowing the grass and caring for the yard during this tenancy. I allow the landlord's claim for a monetary Order of \$50.00 for 5 hours of lawn maintenance at the requested rate of \$10.00 per hour.

Background and Evidence - Parking of Extra Vehicle at the Rear of the Property

The landlord testified that section 44 of the Residential Tenancy Agreement provided one parking space to the tenant. He also noted that the signed Addendum to that Agreement confirmed that the tenant knew that the owner planned to use the rear portion of the property for storage.

The landlord requested a monetary order of \$175.00 for five months of storage of a camper trailer, at the rate of \$35.00 per month at the rear of this property.

Analysis – Parking of Extra Vehicle at the Rear of the Property

The tenant testified that the landlord told her that she could keep the camper trailer on the property. She said that this vehicle was on the property for a month and a half. She later changed this testimony to two and a half months (mid-February until early May).

Based on the evidence presented, I accept the landlord's claim that he is entitled to a monetary award for storage of the tenant's camper trailer on this property in contravention of the tenancy agreement. I grant the landlord a monetary award in the amount of \$70.00 for storage of the vehicle on the property for two months.

Background and Evidence - Rent for Additional Tenant or Occupant

Section 6 of the Residential Tenancy Agreement required the tenant's payment of an additional \$100.00 per month for each additional tenant or occupant not named on the tenancy agreement. The landlord requested a monetary award of \$100.00 for additional rent for the month of May 2010. He maintained that the tenant's male friend was living there during that month. The tenant denied that her male friend was living with her during this tenancy. She testified that he came to visit their daughter, but he was living with his boss in another community during those months. She said that he occasionally stayed overnight before he would drive to his home the following day.

Analysis – Rent for Additional Tenant or Occupant

The landlord has not presented sufficient evidence to demonstrate that there was an additional occupant living at the rental premises for one of the two months of this fixed term tenancy. I dismiss the landlord's application for a monetary award for an additional occupant in the rental premises.

Background and Evidence - BC Hydro Bill

The parties testified the tenant was responsible for $\frac{3}{4}$ of the BC Hydro bill for this property and the resident in the lower suite, the landlord's mother, was responsible for the other $\frac{1}{4}$ of that bill. The landlord said that he sent the tenant a cheque for \$44.25 for his mother's portion of the tenant's \$177.01 May 2010 BC Hydro bill when he received a copy of the tenant's bill on July 7, 2010. The tenant confirmed that she had received and cashed this cheque from the landlord after she applied for dispute resolution of this issue. She testified that she was still seeking reimbursement for her May 2010 BC Hydro bill because she believed that her BC Hydro costs were out of line with what she should have had to pay during this tenancy.

Analysis – BC Hydro Bill

I am satisfied that the landlord has taken action to resolve the unpaid portion of the tenant's BC Hydro costs stemming from this tenancy. I dismiss the tenant's application for a monetary award for her BC Hydro costs.

Background and Evidence – Return of Security Deposit

The parties agreed that the tenant submitted her forwarding address in writing to the landlord on May 31, 2010 so that the landlord could return her security deposit. The tenant testified that the landlord should have returned \$150.00 of the original January 1, 2010 security deposit when she signed the new tenancy agreement on March 31, 2010, because a security deposit can only be half of the amount of the monthly rent.

Analysis - Return of Security Deposit

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

In this case, the landlord applied for dispute resolution on June 7, 2010, well within the 15 day period for taking such action. I dismiss the tenant's application for double the security deposit because the landlord complied with section 38(1) of the *Act*. Given the unusual circumstances of this short fixed-term tenancy, it seems that the tenant agreed to let the landlord keep the original security deposit until the expiration of the tenancy agreement on May 31, 2010.

I allow the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary awards granted in this decision.

Conclusion

I allow the landlord to retain \$50.00 for lawn maintenance and \$75.00 for the tenant's storage of an extra vehicle on the landlord's property from the tenant's \$600.00 security deposit. I issue a monetary Order in the tenant's favour to obtain the remaining \$475.00 of the tenant's security deposit plus allowable interest from the landlord. No interest is payable over this period. I make no order regarding recovery of the parties' filing fees.

I dismiss the remainder of the landlord's and tenant's applications.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. If necessary, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.