



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Both parties attended the hearing and each called one witness. The parties and the witnesses all gave affirmed evidence, and the parties were given the opportunity to cross examine each other and each other's witnesses on their oral evidence.

The tenant provided evidence that was not submitted within the time allowed under the *Residential Tenancy Act* and Rules of Procedure however, with the consent of the landlord, that evidence is considered in this Decision, and as a result of that consent, I find that the landlord is not prejudiced by the inclusion of that late evidence.

The landlord's application did not include an application for an order permitting the landlord to retain the security deposit and pet damage deposit in partial satisfaction of the claim, and she applied to amend the application accordingly. The tenant objected to the amendment, however due to the consideration given to the tenant for the tenant's late evidence, and due to the nature of the landlord's application, I hereby order that the application be amended accordingly, and I make this Decision on the basis that the landlord had made that application.

All evidence and information provided at the hearing has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This tenancy commenced on August 1, 2007 as a fixed term tenancy which runs from year to year, according to the Tenancy Agreement. Rent in the amount of \$1,238.40 was payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$600.00. A condition inspection report was completed at the outset of the tenancy, a copy of which was provided in advance of the hearing. That report has written across it "Good" for every room listed with the exceptions of the dining room and garage area which are both marked "N/A," and 2 cracked windows are noted for a bedroom. The landlord and tenant have both signed the move-in condition inspection report whereby the tenant agreed that the report fairly represented the condition of the unit at the time. No date appears on the form however both parties agree that the report was completed at the beginning of the tenancy. No move-out condition inspection report was completed.

The parties also agree that the tenant gave notice to end the tenancy in April, 2010. The landlord stated that she found the written notice in her mail box on April 5, 2010 and the tenant testified that she works nights and dropped it into the landlord's mailbox before going to work on the evening of March 31, 2010. A copy of that notice was not provided in advance of the hearing however both parties agree that it was dated April 1, 2010.

The landlord is claiming \$1,238.40 for unpaid rent for the month of May, 2010 as well as damages totalling \$2,095.50.

The landlord testified that the tenant moved out of the unit on April 30, 2010, and after her departure, the landlord had to have the hardwood floors re-sanded and repaired due to dog hair and dog urine which also caused a bad odour in the house. She also testified that a door to the unit would not close due to a previous break-in. She gave the tenant's adult son \$300.00 to fix the door but it was not done properly so she paid another person \$100.00 to complete that repair. She further testified that a window had been broken by the tenant's son when he broke into the unit after the tenant moved out. The landlord provided one invoice for the three repairs, which included \$1,200.00 for the hardwood floor repairs, \$100.00 for the door repair and \$75.00 for the window repair.

The landlord further testified that after the tenant had vacated the unit she was required to hire someone to clean the vents and the furnace that were full of dog hair and other debris, for which she paid \$220.50 and provided a receipt for that service. Also provided was a receipt for \$500.00 for garbage removal and cleaning the yard. The landlord's evidence also includes photographs showing her picking up broken glass in the yard and multiple items that she stated had to be taken to the dump.

The landlord's witness testified that he did the repairs to the hardwood floor as well as the door and window repairs, and confirmed that the landlord paid him \$1,200.00 for the services. He further testified that he had to complete the hardwood repairs to the entire living room floor as well as the master bedroom. All stains could not be removed and are still not 100% removed.

The tenant testified that the house was old. She also testified that in January, 2010 she contacted the landlord about a mouse infestation. She stated that the landlord had replied to her that it was not her responsibility; it was the responsibility of the tenant.

The tenant and her witness attempted to rid the house of the mice, but without success. Several photographs were provided by the tenant in advance of the hearing and they show several locations within the house riddled with what appears to be mouse droppings, and the tenant testified were, in fact, mouse droppings. She stated that she

worked grave-yard shift and had to clean counter tops, the stove, and other areas daily upon arriving home from work due to the mouse droppings.

She further testified that the odour of urine was from multiple mice, not her dog. She further stated that she did some improvements to the house during her tenancy, including painting 2 walls in the kitchen. She also testified that mould was growing on the cupboard doors.

The tenant also testified that on May 1, 2010 her sons tried to go into the unit to get some ply-wood, a freezer, washer and dryer, but the door was locked. The tenant and her sons tried to contact the landlord, but she refused to talk to them. The tenant did not receive back those items.

The tenant's witness testified that he spoke to the landlord in January, again in February, and again in March about the mouse infestation, but the landlord would not respond. In February he contacted the City in an effort to have an inspector to look at the situation after the tenant had called him complaining that a mouse had dropped on her head and "nipped" her. By the time an inspector could attend, the tenant had already given her notice to move out. Further, he told the tenant not to use the stove because it was unhealthy with mouse droppings and torn insulation. He also told the tenant not to clean the mouse droppings when she moved; that would be the responsibility of the landlord, who told him that she would not call an exterminator until the house had been cleaned. He stated that the landlord visited the rental unit in February and the house was in disarray.

The witness further testified that he lived in the house for a period of time with the tenant. He stated that water damage existed inside the unit, and the landlord did have the roof replaced, but she did not deal with the water damage inside the unit. As a result, the exhaust fan over the stove was mouldy and black mould was throughout the house. He also testified that after he moved out, he still visited the tenant regularly and is well aware of the situation.

The landlord denied that the tenant or her witness ever called her about the mice, and that she was not aware of it until April. She also denied that the tenant or her sons contacted her on May 1, 2010. She also denied that the urine odour could have been caused by the mice because of the amount of urine in the premises; the dog was the cause of the urine smell and damage to the hardwood floor.

Analysis

Firstly, dealing with the landlord's application to retain the security deposit and pet damage deposit, Section 23(3) and section 35 of the *Residential Tenancy Act* both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the move-out condition inspection. The *Act* places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and states that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 23(6) of the *Act* states that the landlord may make the inspection and complete and sign the report without the tenant if the landlord has offered the tenant at least 2 opportunities and the tenant fails to participate, or the tenant has abandoned the rental unit. In the absence of any attempt by the landlord to conduct the move-out condition inspection, the right of the landlord to claim against the security deposit or pet damage deposit is extinguished.

With respect to the landlord's application for a monetary order for unpaid rent, I find that the tenant was justified in giving the landlord one month's notice to vacate, even though the landlord felt that the lease had not expired. The fixed term tenancy did not show an expiry date, and therefore, the tenant cannot be held to a fixed term. Having found that the landlord cannot hold the tenant to the fixed term, I find that the tenancy was a periodic tenancy.

With respect to the mouse infestation, Section 32 of the *Act* imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a landlord is required to make sure the unit is inhabitable. I find that the tenant and her witness did contact the landlord, and the landlord was aware of the infestation by February if not sooner.

Further, with respect to the tenant's evidence that the yard was unclean when she moved into the house, the tenant did not disclose that on the move-in condition inspection report.

In order to be successful with a claim for damages, the onus is on the claiming party to satisfy the four-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's breach of the *Act* or Tenancy Agreement;
3. The amount of the damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damages.

In the circumstances, I find that the landlord has satisfied elements 1 and 3, however has only partially satisfied elements 2 and 4. Whether or not the urine odour and damage in the unit is more than what mice would be capable of doing to the rental unit, and that the dog was more likely, I find that the landlord's failure to do anything in February or prior when she attended the rental unit does not satisfy me that the landlord attempted to mitigate any damages.

I do find, however that the landlord has satisfied all elements with respect to the hardwood floor, and the landlord is therefore entitled to recover \$1,200.00.

I do not find that the tenant is responsible for the door repair or window repair caused by a break-in or by the tenant's adult son after the tenant moved out.

With respect to the invoice for cleaning air vents in the amount of \$220.50, I find that the move-in condition inspection report did not indicate anything about air vents, and therefore find that it is impossible to ascertain their condition when the tenant moved into the unit. Therefore, the landlord's application for cleaning air vents is hereby dismissed.

The photographs and evidence provided by the landlord with respect to garbage removal from the house and yard do justify the amount claimed of \$500.00.

I further find that the landlord had the responsibility to deal with the water damage inside the unit, and the humidity caused the build-up of mould throughout the unit. Where such a result was either intended or reasonably foreseeable, the landlord ought to have dealt with both issues in some fashion, and did not. Therefore, I find that the tenant was justified in breaking the agreement and felt that she had to move.

Conclusion

For the reasons set out above, the landlord's application to retain the security deposit and pet damage deposit are hereby dismissed without leave to reapply.

The landlord's application for unpaid rent is hereby dismissed without leave to reapply.

The landlord's application for damages to the rental unit is hereby awarded at \$1,700.00.

Having found that the landlord owes the tenant \$1,200.00 for the security deposit and pet damage deposit and the tenant owes the landlord \$1,700.00 for damages, pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I order that the

amounts be set-off from one another. The landlord is also entitled to recover the \$50.00 filing fee from the tenant, and I grant the landlord an order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$550.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: October 21, 2010.

Dispute Resolution Officer