



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      MND, MNR, MNSD, MNDC, FF, SS

### **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 a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; for an order permitting the landlord to serve documents or evidence upon the tenants in a different way than required by the *Act*; and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing however despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on June 8, 2010, the tenants did not attend. The landlord gave affirmed testimony.

At the outset of the hearing, the landlord testified that she has not received a forwarding address from the tenants, and sent the Landlord's Application for Dispute Resolution and notice of hearing documents to the rental unit and the post office forwarded that mail to another address. Pursuant to Section 89 of the *Residential Tenancy Act*, I find that the landlord has served the documents aforementioned to the tenants at the last known address for the tenants, and therefore has satisfied the service requirement under the *Act*.

The landlord also provided an evidence package in advance of the hearing and testified that the tenants were also served with a copy of that evidence. All evidence and information provided 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 unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for loss or damage 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 fixed term tenancy began on July 1, 2006 and expired on June 30, 2007, and then reverted to a month-to-month tenancy. The tenancy ended on April 15, 2010 when the tenants vacated the rental unit. Rent in the amount of \$1,000.00 was payable in advance on the 1<sup>st</sup> day of each month. The landlord collected a security deposit in the amount of \$500.00, half of which was paid on June 15, 2006 and the other half on July 1, 2006. The landlord did not complete a move-in condition inspection report.

The landlord testified that on February 27, 2010 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property personally. The tenants then failed to pay rent in full for the month of March, 2010, leaving a balance due of \$350.00. The landlord stated that she is not entitled to rent for the month of April, 2010 due to serving the 2 Month Notice to End Tenancy for Landlord's Use of Property, however, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the tenants by leaving the notice in the tenants' mailbox on March 20, 2010.

The landlord also testified that the tenancy agreement, a copy of which was provided in advance of the hearing, states that water, electricity, heat, cablevision and garbage

collection are not included in the rental amount. Further, an addendum is attached to the tenancy agreement which states that the tenants are responsible for those utilities. The landlord further testified that on February 20, 2010 a "Breach Letter" was provided to the tenants which states that utilities are overdue, and requests that the arrears of \$451.92 be paid by February 28, 2010, and the balance of \$939.95 be paid by March 21, 2010. On May 26, 2010, after the tenancy ended, the landlord sent another notice to the tenants with respect to unpaid utilities showing that a balance of \$1,436.05 is outstanding. A copy of that notice was provided in advance of the hearing along with copies of the City Account for the rental address printed on February 19, 2010. That accounting shows garbage, basic water, basic sewer, metered water and metered sewer, as well as some interest charges. The landlord is claiming \$480.13 for 2006/2007, \$459.82 for 2008, \$451.92 for 2009 and \$108.00 for 2010. She testified that the City sends the utility bills to the tenant and to the landlord. The landlord also claims \$14.52 for a Terasen Gas bill for the period of April 14 to 30, 2010 for which the tenants were responsible and the landlord paid. A copy of that bill was also provided in advance of the hearing, and it shows that \$23.98 was due from the previous bill, and the gas company credited the account \$21.64; the balance of \$14.52 is for current charges on the bill which is dated May 6, 2010.

The landlord is also claiming \$120.00 for the services of a property manager who was hired to evict the tenants, service of documents and to conduct a condition inspection report at the end of the tenancy. She stated that she makes this claim because the tenant threatened to have the landlord charged if the male tenant's mother died during the move so the property manager was to complete the move-out condition inspection rather than the landlord.

The landlord received an email from the property manager setting out damages, and states that other persons confirmed that the tenant was served with a 24 hour notice of the inspection, and they did not show.

The landlord further claims \$75.18 for registered mail costs associated with the tenancy, not including costs for this application, and \$20.70 for photocopy fees. The landlord

also testified to damages to the rental unit and claims from the tenant \$250.49 for waste services for clean-up of the debris left behind by the tenants, \$48.38 for rental of a shop-vac to vacuum the walls due to soot and dust, \$46.31 for cleaning supplies from Walmart, \$82.01 for cleaning supplies from Rona, \$309.75 for carpet cleaning, \$1,094.28 for replacing underlay and carpeting, and \$49.99 for Nature's Miracle, which is a deodorizer. She further testified that the carpets had to be replaced in 2 upstairs bedrooms because they had been ripped by the tenants' cats.

### **Analysis**

The *Residential Tenancy Act* is clear with respect to move-in and move-out condition inspections. The onus is on the landlord to prove that the landlord offered the tenant at least 2 opportunities to conduct the inspections, and Section 24 (2) sets out the consequences if the report requirements are not met at the beginning of the tenancy:

- 24 (2)** The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
  - (b) having complied with section 23 (3), does not participate on either occasion,  
or
  - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord has failed to complete the move-in condition inspection and, therefore, the landlord cannot be successful for retention of the security deposit for damage, but can claim against it for unpaid rent or utilities.

With respect to the damages, the onus is on the claiming party to satisfy a 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of the damage or loss;
4. what steps the claiming party took to mitigate, or reduce such damages.

In regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenants during the course of this tenancy. I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended. The landlord failed to complete any move-in condition inspection.

Section 23(1) on the *Act* requires that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 23(3) and section 35 both state that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the 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. Part 3 of the Regulations goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspections and Reports must be conducted.

In regards to the landlord's allegation that the tenants did not cooperate, the *Act* does anticipate such situations. In particular, section 17 of the Regulation details exactly how the inspection must be arranged, as follows:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
  - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 23(6) of the *Act* states that the landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Both sections 25 and 35 which deal with the Start of Tenancy and the End of Tenancy Condition Inspection Report requirements contain similar provisions as outlined above.

In this instance, the landlord had a property manager complete the move-out condition inspection without the tenants present, and the email sent to the landlord states that only one opportunity was provided to the tenants who did not attend on that opportunity. I find the practice followed by this property manager to be seriously flawed in that it does not comply with the *Act* or the regulations. Moreover, this method is also deficient because it does not effectively deal with situations where parties may disagree on the findings. An inspection conducted by one party is particularly problematic with an End-of-Tenancy Report completed in the tenant's absence or after-the-fact.

An inspection must be done contemporaneously with the vacating of the unit as required by the *Act* and by engaging in an alternate procedure not sanctioned by the legislation, the evidentiary weight of the move-out inspection report was negated. The methodology also created a credibility problem in that the landlord was seeking to obtain an order enforcing the *Act*, after having neglected to follow the *Act*. I find serious flaws in the landlord's evidence regarding condition inspections.

With respect to the unpaid utilities, I have reviewed the documentation provided by the landlord, and I find that the tenants are responsible for the amount claimed at \$1,436.05 as well as \$14.52 for the Terasen Gas bill.

## **Conclusion**

For the reasons set out above, I find that the landlord has established a claim for \$350.00 in unpaid rent. The landlord's application for unpaid utilities is hereby allowed at \$1,450.57 including the Terasen Gas bill. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,350.57. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's application for registered mail, photocopies, cleaning, cleaning supplies and damages to the unit, site or property are hereby dismissed without leave to reapply.

The landlord's application for hiring a property management service is hereby dismissed without leave to reapply.

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: November 02, 2010.

---

Dispute Resolution Officer