



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks:

1. A monetary Order for compensation for damage and/or loss;
2. Recovery of the security deposit; and
3. Recovery of the filing fee paid for this application.

In his Application for Dispute Resolution the tenant seeks \$800.00 plus the \$50.00 filing fee.

The landlord seeks:

1. A monetary Order for compensation for damage and/or loss;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

In his Application for Dispute Resolution the landlord seeks \$3,048.00 plus the \$50.00 filing fee.

At the hearing of this matter the tenant submitted that he had amended his application for dispute resolution on September 9, 2010 to seek \$5,072.63 rather than \$800.00.

The tenant testified that the landlord was personally served with the amended application on November 1, 2010. The landlord testified that he did receive an

amended application but that amended application still indicated that the tenant was seeking \$800.00 not \$5,072.63.

The Application for Dispute Resolution that is before me has the word "Amendment" written on it however it still requests a monetary award of \$800.00. There is a separate sheet requesting \$5,072.63 however the landlord states he did not receive the additional sheet.

I am not satisfied that the landlord has knowledge of any claim being made against him outside of the amount shown on the original and amended application form that being \$800.00. I therefore decline to hear any claim in excess of that sum save for the claim for the \$50.00 filing fee.

Background and Evidence

The tenant says that this tenancy ended on July 31, 2010 following service of a 2 month notice to end tenancy for landlord's use. The tenant says that he supplied his forwarding address in writing to the tenant on August 10, 2010 however to date the landlord has not returned the security deposit. The security deposit, paid on July 1, 2003 was in the sum of \$643.00.

The tenant says that in addition to his claim for his security deposit he is seeking damages for loss of quiet enjoyment. The tenant during his tenancy he was without a toilet for 5-6 days and he had no bathroom sink for 2 months while bathroom renovations were performed. The tenant says he only had one bathroom and he was forced to use the neighbour's bathroom.

The tenant also says he suffered a loss of privacy due to a fence in the back yard being blown down during a wind storm in February which was never repaired or replaced. The tenant also claims recovery of utility payments he made. The tenant says he had the BC Hydro bill in his own name and he collected 1/3 from the tenant in the basement

suite. During the tenancy the tenant signed up for equalization payments and, at the end of the tenancy the equalized payments did not cover the amount of hydro actually used so the tenant received a final billing from BC Hydro in the sum of \$812.58. The tenant says the landlord offered to pay for hydro if and when there were no tenants in the basement or if the tenant was unwilling to pay. The tenant therefore seeks \$262.63 or 1/3 from the landlord. The tenant says the Rental Tenancy Agreement clearly stipulated that the responsibility shifts to the landlord in these instances.

In response to the tenant's claims the landlord says the tenant was without a bathroom for only 2 days and during those 2 days the tenant had the use of his friend's bathroom as his friend lived in the suite below.

The landlord disagrees that there was any loss of quiet enjoyment or privacy as a result of the fence.

With respect to utilities, the landlord says that the downstairs tenant actually overpaid the hydro as he was making monthly payments to this tenant which exceeded what his share would have been once the actual bills came through. The landlord submitted a letter from that tenant who states he was paying \$100.00 a month since August 2009 bringing his total payments for the period August 2009 to July 2010 to \$1,200.00. The final Terasen invoice shows the charges for the period August 2009 to July 31, 2010 to be \$1,580.53 and BC Hydro to be \$1,536.02. The landlord submits that the total utility costs for the period was \$3,271.66. The downstairs tenant's share was 1/3 therefore the downstairs tenant should have only paid \$1,090.55 not \$1,200.00. The downstairs tenant is now demanding that the landlord return \$109.45 to him.

With respect to the security deposit, the landlord acknowledges receiving the tenant's forwarding address on August 10 or 11, 2010. The landlord filed his application for dispute resolution seeking to retain the deposit on August 25, 2010 which is in the correct time frame specified under the Act.

The landlord claims costs of repairing damage to the hardwood floors (\$900.00); painting costs (\$1,848.00) and replacement of backyard sod (\$300.00). The landlord has not supplied Condition Inspection Reports although he states they were prepared at the start and end of this tenancy.

The landlord says the tenant had cats on the property without permission and this is how the hardwood floors were damaged by cat claw marks and cat spray or urine. The landlord says an estimate for the repairs is \$900.00.

With respect to the painting the landlord says the tenant repainted the bedrooms in a dark purple and the living room in a dark forest green. The landlord says these colours were not permitted by the landlord but the landlord did verbally agree to them so long as the walls were returned to their original colour at the end of the tenancy which, the landlord says was not done. The landlord says he has obtained 3 quotations for repainting, only one quotation was submitted and it is in the sum of \$1,848.00.

The tenant says the rooms were painted in dark purple and dark forest green when he moved in.

The landlord says the tenant removed sod in the backyard in order to plant a garden. The landlord says he estimates it will cost \$300.00 to replace the sod.

With respect to the landlords claims the tenant says he did not have "cats" in the rental unit. The tenant says he had one female cat that does not spray. However there was a time when the basement was flooded and the windows were left open and other cats may have entered the premises and caused damage.

The tenant says the garden was there when he moved into the rental unit. The tenant says the sod was in the same configuration when he moved in as it was when he moved out.

Analysis

The evidence of the landlord is that the rental property is an older home. The landlord ended the tenancy for landlord's use in July 2010. Since the tenancy ended the landlord says the property has undergone extensive renovations in preparation for the landlords to take up occupancy. The landlord says there are move-in and move-out inspection reports but he has not submitted them in evidence and I therefore have very little means by which of determining the condition of the property at the start of this tenancy and at the end. This and the testimony of the landlord and the tenant is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. Overall I am not satisfied that either party has met their burden. I therefore dismiss the claims of both parties save for the tenant's claim for the return of his security deposit.

The security deposit was \$643.00 paid on July 1, 2003 and now has a value with interest of \$665.76. I order the landlord to return \$665.76 to the tenant forthwith and I will provide the tenant with an Order enforceable in the provincial Court of British Columbia in the event that the landlord does not comply with this Order willingly.

Both parties' claims for recovery of the filing fee are dismissed.
