

DECISION

Dispute Codes OPB, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and utilities and for damage to the unit, site or property pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Preliminary Matters

November 10, 2010 Conference Call

Both parties attended the first hearing on November 10, 2010 and were given a full opportunity to be heard, to present evidence and to make submissions. During the November 10, 2010 conference call, the landlord testified that she sent the tenant a copy of her application for dispute resolution by registered mail on October 13, 2010. She provided a Canada Post Tracking Number to confirm her mailing of this document to the tenant. The tenant said that she did not receive the landlord's application for dispute resolution until October 29, 2010, and asked for more time to prepare for the landlord's application. I noted that the *Act* considers documents sent by registered mail to have been served five days after they are sent. According to the *Act*, the tenant was deemed to have been served with the landlord's original application for dispute resolution on October 19, 2010. I am satisfied that the landlord served the tenant with her original application for dispute resolution in accordance with the *Act* and in sufficient time to prepare for the November 10, 2010 hearing.

The tenant also asked for an adjournment because she testified that she did not receive the landlord's evidence package until late October 2010 and did not have enough time

to prepare a response to the landlord's evidence. I denied the tenant's request for an adjournment on this basis.

The parties did not agree on the contents of the landlord's evidence package received by the Residential Tenancy Branch on November 5, 2010. The landlord said that the evidence package of 21 pages was handed to one of the tenants' roommates in late October 2010. The tenant testified that the only evidence she received from the landlord in addition to the original application from the landlord was a two page document. Both parties testified that the other party was incorrect in their oral evidence regarding the evidence provided.

Since I was not satisfied that the tenant would have a proper opportunity to respond to the case against her without the full evidence package submitted to the Residential Tenancy Branch, I granted an adjournment to allow the landlord to send the entire evidence package to the tenant. I directed the landlord to send this evidence package to the tenant by registered mail.

December 3, 2010 Conference Call

The landlord attended the second conference call hearing, but the tenant did not. By then, the tenant had vacated the rental premises on November 16, 2010. After the landlord obtained access to the premises, she amended her application for dispute resolution requesting a monetary award of \$10,597.00 instead of the \$1,800.00 requested in her original application. She testified that she sent the tenant a copy of her amended application for dispute resolution and her evidence package by registered mail on November 24, 2010. She provided the Canada Post Tracking Number to confirm this mailing. She said that she has not received any information from Canada Post that would lead her to believe that the package was not received by the tenant. I am satisfied that the tenant was served with this amended application for dispute resolution and evidence package in accordance with the *Act*.

The landlord withdrew her application for an Order of Possession on December 3, 2010. She also asked for permission to revise the spelling of the tenant's first name to that shown above.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary award for damage to the rental unit? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover her filing fee from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2009. Monthly rent was set at \$2,500.00, payable on the first of each month plus a portion of the utilities for the property. The landlord said that the tenant paid a \$1,250.00 security deposit on September 21, 2009, which she continues to hold.

The landlord testified that the tenant vacated the rental premises without leaving her the keys or garage door opener on November 16, 2010. The landlord submitted copies of a joint move-in condition inspection report regarding the November 12, 2009 inspection of the rental premises. She provided evidence of her attempts to arrange for a joint move-out condition inspection with the tenant, but testified that the tenant refused to meet with her at the arranged time. Once she was able to gain access to the rental premises, the landlord conducted her own inspection of the premises on November 16 and 22, 2010, accompanied by two witnesses. She testified that she sent the tenant a copy of the move-out condition inspection report which she submitted into written evidence. She also submitted a number of photographs of the condition of the premises after this tenancy ended, as well as receipts, estimates and written summaries relating to her application.

The landlord testified that the tenant did not pay rent for October or November 2010, and underpaid her rent for some months during the early portions of this tenancy. The landlord also testified that the tenant still owed $\frac{3}{4}$ of a \$204.44 BC Hydro bill (i.e., \$153.33) issued on November 18, 2009. In her amended application of November 24, 2010, the landlord submitted the following summary of her request for a monetary Order of \$10,597.90:

Item	Amount
Unpaid Rent for October & November 2010 (\$2500.00 = \$1450.00 = \$4,950.00)	\$4,950.00
Damages & Utilities	1,800.00
Damages on the End of Tenancy	3,847.00
Total Monetary Award Requested	\$10,597.90

At the December 3, 2010 hearing, I asked the landlord to clarify her calculation of her application for unpaid rent from October and November 2010. After reviewing her calculations, she said that she was in error regarding the amount of unpaid rent owing, and revised her application for unpaid rent to \$3,950.00, thus reducing the amount of her overall application to \$9, 597.90.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, receipts, estimates, miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

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.

Based on the undisputed evidence submitted by the landlord, I grant the landlord a monetary award of \$3,950.00 for unpaid rent for October and November 2010, the amounts of her revised claim. As the landlord provided no written evidence to support her claim for unpaid rent from any other months of this tenancy, I disallow any further claim for unpaid rent. I also grant a monetary award of \$153.33 for unpaid utilities arising from this tenancy.

The landlord submitted convincing oral, photographic and written evidence regarding repairs that she paid for the sewer line from this property. The landlord testified that the tenant called a plumbing contractor to conduct repairs without first consulting with the landlord or advising her that there were problems with the plumbing or sewer line. The landlord testified that the contractor advised her that the Inspection Chamber Cap was likely damaged by use of a trampoline that the tenant brought to the property. The landlord submitted into written evidence a copy of the \$1,400.00 receipt for the September 15 and 16, 2010 work done by the contractor and an October 21, 2010 letter from the contractor outlining the nature of the work that was required. I find that it was more likely than not that the tenant was responsible for the blockage of sewage pipes on the property by a broken Inspection Chamber Cap. Based on the undisputed evidence presented by the landlord, I allow the landlord a monetary award in the amount of \$1,400.00 for these repairs.

As outlined above, the landlord included in her amended claim for a monetary award an amount of \$3,847.00 for damages that she identified at the end of this tenancy. Of this amount, she submitted a written estimate of \$2,825.70 to replace the carpet in the master bedroom which she testified was damaged beyond repair by the tenant. She said that construction of this building was completed at the end of 2003. She testified that the carpet was new when the landlord first purchased and occupied these premises at the end of 2004.

Based on the undisputed evidence presented by the landlord, I accept that the landlord had to replace the damaged carpet in the master bedroom. However, in accordance

with Residential Tenancy Policy Guideline 37, the average life cycle of carpet for a rental unit is estimated at 10 years. Since the carpet required replacement four years earlier than would normally have been expected, I allow the landlord a monetary award of 40% of her estimated cost of replacing this portion of carpet. This results in a monetary award of \$1,130.24 (i.e., $\$2,825.76 \times 40\% = \$1,130.24$) which I have included in the monetary Order outlined below.

Of the remainder of the landlord's claim for damage that became apparent at the end of this tenancy, the only specific receipt that the landlord submitted was the landlord's carpet cleaning receipt of \$103.32. I allow a monetary award of \$103.32 to reimburse the landlord for the cost of cleaning the carpets at the end of this tenancy.

Although the landlord did not produce receipts for the remainder of the damage she maintained was caused during this tenancy, she provided photographs, move-in and move-out inspection reports, and oral testimony regarding estimates she has received to repair the damage caused by the tenant. She said that the lowest of two estimates she received to repair the tenant's damage to one of the ceilings was \$550.00. She also said that she has received an estimate of \$250.00 to repair six broken tiles, if she can find a match with the existing tiles. She provided evidence regarding the tenant's removal of the thermostat from the rental premises which will cost \$150.00 to replace for the radiant heat system in place in the rental unit and another \$110.00 in labour. She also said that it cost her \$156.00 to obtain entry to the premises because the tenant vacated without leaving keys. She also noted her cost of a new garage door opener at \$33.09 and removal of two loads of garbage at \$200.00. I am satisfied by the landlord's evidence that she incurred at least \$1,021.30 in damage beyond the damage to the carpet in the master bedroom and the carpet cleaning expense. For that reason, I allow the landlord's claim for \$1,021.30.

I allow the landlord to retain the tenant's \$1,250.00 security deposit plus interest in partial satisfaction of the monetary award issued to the landlord. No interest is payable

over this period. Since the landlord has been successful in this application, I allow her to recover her \$100.00 filing fee for this application from the tenant.

Conclusion

I issue a monetary Order in the following terms which allows the landlord to retain the tenant's security deposit and to recover the filing fee from the tenant:

Item	Amount
Unpaid October 2010 Rent	\$2,500.00
Unpaid November 2010 Rent Claimed by Landlord	1,450.00
Unpaid Utilities	153.33
Repairs to Sewage Line	1,400.00
Replacement of Carpet	1,130.24
Carpet Cleaning Costs	103.32
Other Damage Arising from this Tenancy	1,021.30
Less Security Deposit	-1,250.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$6,608.19

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, 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*.