



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, SS, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for an order permitting the landlord to serve documents or evidence in a different way than required by the *Act*; and to recover the filing fee from the tenant for the cost of this application.

The parties both attended, gave affirmed testimony, provided evidence in advance of the hearing, and were given the opportunity to cross examine each other on their evidence. The parties also called witnesses who were also subject to cross examination. All evidence, testimony and information provided has been reviewed and is considered in this Decision.

The landlord did not lead any evidence with respect to the application for an order permitting the service of documents or evidence in a different way than required by the *Act*. The parties agreed that all evidence had been exchanged, all evidence provided has been considered in this Decision, and I find that service of the notice of hearing, the Landlord's Application for Dispute Resolution and other documents are deemed to be sufficiently served.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

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

Background and Evidence

This month-to-month tenancy began on July 15, 2008 and ended on May 5, 2010. Rent in the amount of \$695.00 per month was payable in advance at the end of the previous month. On July 12, 2008 the landlord collected a security deposit from the tenant in the amount of \$350.00.

The landlord testified that she had served the tenant with a 1 Month Notice to End Tenancy for Cause on April 20, 2010 with an expected vacancy date of May 31, 2010. The tenant moved from the rental unit in advance of that date, on May 4 or 5, 2010 without paying the rent for the month of May. The landlord claims \$695.00 for unpaid rent.

The landlord also testified that the tenant left the unit without notice and without cleaning, and claims damages to the rental unit. She stated that on May 4, 2010 the tenant's husband, who had moved in with the tenant during the tenancy, gave the keys for the rental unit to the landlord's niece who is a neighbour to the rental unit and stated they were finished moving except for the shed. The niece took the keys to the landlord who then went to the rental unit, noticed the shed open, and the next day bought a lock and returned to clean. Food, several bags of garbage and a mattress remained. She could not find the tenant, nor did she hear from the tenant at all after that date. She stated that the tenant left the unit with holes in the walls, a broken window in the bathroom and missing blinds. The unit also required painting, drywall repair and cleaning. The landlord claims:

- \$132.00 for West Coast Title to serve the tenant;
- \$150.00 for which she paid a neighbour to clean the unit, clean windows, remove the garbage inside and outside of the unit and for painting the inside of the closets and cupboards
- \$535.00 for drywall repair which includes materials and labor
- \$50.00 for the filing fee
- \$196.00 for services to find the tenant
- \$119.27 to Dependable glass to replace the bathroom window
- \$72.00 for the missing blinds
- \$18.02 for paint for the baseboards

- \$30.18 for painting materials
- \$9.90 for paint
- \$32.00 for a lock for the shed and miscellaneous items
- \$250.00 to pay the painter to paint the unit.

The landlord further testified that during the tenancy, the tenant had done some painting and left some paint behind. The landlord used that paint, which is why the claim for paint is low.

The landlord further testified that a move-in condition inspection was done but she left it with the tenant and it was never returned. She further stated that a move-out condition inspection was not possible because she could not locate the tenant, and had no forwarding address for the security deposit.

A witness for the landlord testified that she is a neighbour to the rental unit, and the tenant gave the keys to her. She took them to the landlord and attended the rental unit with the landlord. Cabinet doors were on the floor when they arrived, plastic was over the windows, and there were a couple of holes in the walls. Further, the fridge was in the middle of the room.

Another witness for the landlord testified that the landlord had asked him to do some cleaning, painting and removal of lots of garbage in the rental unit. He stated that he painted inside the cabinets and closets, and later painted the bedroom doors. The landlord paid him \$150.00 for his services.

The tenant testified that during the tenancy the landlord refused to fix a leak and drainage on her side of the 4-plex which caused a mould build-up in the bathroom and bedroom. The bathroom tiles were seeping into the walls. The landlord had her son attend to do some repairs to the bathroom, and he removed the curtain rod, soap dish and tiles. He replaced the tiles but did not complete the repairs to the ceiling. She stated that she asked the landlord to have the repair completed, but several days later, it still wasn't repaired and the tenant's husband put up cedar planks to hold up the ceiling.

The tenant also cleaned the unit before departing except for the mould build-up. She left a mattress in the rental unit to sleep on while she did the cleaning. The tenant also disputes the evidence of the landlord that garbage was left inside and outside the unit; she took the garbage to the curb on May 5, 2010 and garbage pick-up was to occur the next day, and she took the mattress with her.

She further testified that the shed belonged to her. She stated that she bought the materials to build it, and her husband built it. Further, during the tenancy she painted the inside of the cupboards and then put the doors back on.

The tenant's witness, her husband, testified that when they moved the place was clean and nothing was wrong when they left except for the items that didn't get fixed by the landlord, such as the bathroom ceiling. He further testified that he does not recollect any garbage being left behind.

Analysis

The *Residential Tenancy Act* states that if a landlord fails to conduct a move-in condition inspection report, the landlord's right to claim against the security deposit for damage is extinguished. The landlord testified that one was completed which she left with the tenant and did not receive back. The tenant disputed that evidence stating that a move-in condition inspection report was not completed. I have no evidence to corroborate the evidence of either party, only the absence of a move-in condition inspection report. Therefore, I find that the landlord has failed to establish that it was completed before the tenant moved in.

At the outset of the hearing, I advised the parties that a person making a claim for damages must be able to prove the 4-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 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 such damage or loss.

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. This document, according to the landlord, was left for the tenant's further comments and signature. However, it was never signed nor returned by the tenant.

Under the *Act*, a condition inspection report requires input from the two parties who have entered into the tenancy agreement. Section 23(1) of 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. I find the practice followed by this landlord 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.

With respect to the landlord's claim for damages, I find that the landlord has failed to establish that the damage or loss was committed by the tenant, or that the repairs completed by the tenant, her husband, or the landlord's son are the responsibility to be borne by the tenant.

With respect to the landlord's claim for unpaid rent, I find that the tenant moved from the rental unit prior to the effective date of the notice to end the tenancy issued by the landlord, and the landlord had every right to expect payment of rent for the month of May, 2010 which she did not receive. The *Act* requires both parties to give appropriate notice to end a tenancy, and the tenancy agreement remains in place until the effective date of any such notice. Therefore, the landlord is entitled to unpaid rent in the amount of \$695.00. The landlord is also entitled to recovery of the filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed without leave to reapply. I also dismiss the landlord's application for the costs associated with service on the tenant and for conducting a search to locate the tenant.

Further, I hereby grant a monetary order in favour of the landlord in the amount of \$745.00, being \$695.00 for unpaid rent and \$50.00 for the filing fee for the cost of this application. I further order that the security deposit of \$350.00 and interest in the amount of \$2.48 currently held in trust by the landlord be set off from the amount of rent due, and I order that the tenant pay to the landlord the balance of \$392.52. 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: December 21, 2010.

Dispute Resolution Officer