



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, 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 a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The parties both attended the conference call hearing and the tenant was assisted by an advocate and called witnesses. The landlord also provided evidence in advance of the hearing and provided same to the tenant. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(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?

Background and Evidence

This tenancy began on May 15, 2008 as a fixed term tenancy which was to expire on September 30, 2008. The landlord provided a copy of the tenancy agreement in advance of the hearing which states that at the end of the fixed term, the tenancy may continue on a month-to-month basis or another fixed length of time. The undisputed evidence of the parties is that it did not continue for another fixed length of time.

Rent in the amount of \$550.00 was payable in advance on the 1st day of each month. On May 15, 2008 the landlord collected a security deposit in the amount of \$275.00.

The landlord testified that the tenants phoned him on October 1, 2008 and told him they were moving out, and were in the process of moving their belongings at the time. The landlord attended the rental unit and the parties conducted a move-out condition inspection report, a copy of which was provided in advance of the hearing. That report shows that the tenant agreed to the landlord retaining the security deposit for unpaid rent for the month of September, 2008 because the tenant had only paid half the rent for that month.

The landlord further testified that the tenant occupied the rental unit with her boyfriend, who is not named as a party because he could not locate him to serve him with the Landlord's Application for Dispute Resolution however that co-tenant attended the conference call hearing. The landlord testified that the tenants had hit the metal entrance door to the house with an axe, and left fist holes or holes caused by another means in the bathroom and bedroom doors. Further, the tenants had verbally agreed to not smoke in the unit, but did in fact smoke in the bathroom and rested their cigarettes and put out their cigarettes on the sink and vanity.

He further testified that he buys and renovates and sells houses for a living, and he had doors and a vanity in stock so has not provided receipts for replacing those items. He further testified that the bathroom had to be repainted due to smoking in that room. He also testified that when he bought the house it had been entirely gutted and new items placed in the rental unit.

The landlord claims \$550.00 for rent for the month of October, 2008, \$64.99 each for replacement of the bathroom and bedroom doors, as well as \$150.00 each for fitting the door slabs and painting. He stated that the house is old and standard doors don't fit so he was required to cut them down and drill holes for the hinges to be attached. He also claims \$281.99 for new pre-hung metal door, as well as \$350.00 to remove the frame, fit a new frame, fitting the new door and painting the trim. Further, the landlord claims \$42.99 for new paint and \$80.00 for his time to complete the painting. He also claims \$368.26 for interest, \$109.48 for PST and \$78.20 for GST on the items claimed. No receipts have been provided, however the landlord has provided a quote for \$461.41 for the 3 doors including \$49.44 for GST/HST, as well as an advertisement for the sale of a new vanity at \$299.00 plus taxes.

The tenant testified that the landlord had told her in September that he was not going to renew the lease when it expired in October and she was required to find a new place to live. The tenant had also found out that she was expecting a baby and this unit would not be big enough anyway because she would require a 2 bedroom unit after the baby was born.

The tenant also disagreed with the landlord's evidence that she vacated the rental unit on October 1, 2008. Her evidence is that she vacated the unit on October 3, 2008 and secured a new residence on October 15, 2008. She further testified that she had been in the unit prior to this tenancy because a friend had rented it. The house was old and in need of repair.

The tenant also testified that the agreement for the landlord to retain the security deposit due to a half month's rent not being paid for the month of September, 2008 was

written on the move-out condition inspection report after she signed it. She further stated that the landlord did not give her a copy of the move-out inspection report. She stated that rent was paid in full for the month of September.

The tenant agrees that the metal door was damaged by the tenants, but does not agree to the amount claimed by the landlord.

The tenant's witness, her mother, testified that she assisted at move-in and noticed a number of items that required attention, such as the front bench was broken and pieces were laying on the ground, the railing was laying on the grass instead of being attached to the front porch, an old vehicle and parts cluttered the yard, an exterior door was leaning up against the shed, and she could see light through the back door from the inside of the rental unit and suggested to her daughter that she should ask the landlord to put some weather stripping around the frame. She further stated that the fridge was filthy, blinds were broken, a stair on the porch was broken, the closet in the bathroom was missing a door and the house smelled old and musty. Further, the bathroom sink looked burned and cracked or crystallized from age. She also disputed the landlord's evidence that any items had been replaced with new ones when the landlord had purchased the property. Cupboards, countertops and the sink in the bathroom were old materials.

The witness further testified that she and her mother did the cleaning at move-out because her daughter had become ill during the pregnancy and was not permitted to lift heavy objects and had to be careful with her condition. She further testified that the unit had not been cleaned after previous tenants moved out, who also smoked inside the unit.

Analysis

With respect to the landlord's claim for unpaid rent, I refer to the *Residential Tenancy Act*, which states as follows:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the circumstances, I find that after September 30, 2008 the tenancy reverted to a month-to-month tenancy. If the landlord required the tenant to move at the end of the fixed term, the landlord would be required to give the tenant 2 months notice and one

month of free rent under the *Act* because the tenancy agreement states that at the end of the fixed term the tenancy may continue as a month-to-month tenancy or a new fixed term. The landlord did not give the tenant any written notice to vacate the rental unit, and therefore the tenancy continued on a month-to-month basis. Therefore, the tenant is obliged to pay rent for the month of October, 2008.

In order to be successful in a claim for damages, the onus is on the claiming party to prove a 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 failure to comply with the tenancy agreement or the *Residential Tenancy Act*;
3. the amount of the loss or damage;
4. the efforts the claiming party took to mitigate, or reduce such damage or loss.

Further, awards for damages are meant to be restorative, meaning that the award should not place the landlord in a better financial position, but must be for out-of-pocket expenses.

I have reviewed the move-in condition inspection report and find that all rooms required painting before the tenants moved in, including the bathroom. Therefore, the landlord's request for a monetary order for painting cannot succeed.

The move-in condition inspection report also shows that the countertops in the kitchen and bathroom were loose, the oven was dirty, the sinks leaked and the furnace leaked. I therefore find that the landlord's evidence that the unit was in good repair is not entirely correct. I further find that the witness' evidence that the unit was not cleaned from previous tenants is reliable evidence, and I further find that the bathroom sink and vanity contained burn marks when the tenants moved in and were in need of replacing or repair at the beginning of the tenancy. Therefore, the landlord's claim for replacing the vanity and fittings cannot succeed.

I have also viewed the photographs of the doors provided by the landlord and I find that the doors were not new. I do accept, however, that the doors did not have holes in them when the tenants moved in. I also find that the landlord has failed to establish the actual cost of replacing those doors, and has therefore not proven element 3 of the four-part test for damages.

With respect to the tenant's claim that rent for September had been paid and that the landlord added a comment to the move-out condition inspection report after she had signed it stating that the tenant had agreed to the landlord retaining the security deposit for unpaid rent, I find that the tenant did not file a claim requesting an order that the landlord return the security deposit.



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Conclusion

For the reasons set out above, the landlord's claim for a monetary order for unpaid rent is hereby allowed at \$550.00.

The landlord's claim for damage to the unit, site or property is hereby dismissed without leave to reapply.

The landlord's claim for 8% interest is without basis and is hereby dismissed without leave to reapply.

The landlord's claim for \$109.48 for PST and \$78.20 for GST is without basis and is hereby dismissed without leave to reapply.

Since the landlord has been partially successful with his claim, the landlord is entitled to recovery of the \$50.00 filing fee.

I hereby grant the landlord a monetary order in the total sum of \$600.00. 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: January 12, 2011.

Residential Tenancy Branch