

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MND, MNR, MNSD, FF  
Tenant: CNR, FF

### **Introduction**

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; 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 retain the security deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities, and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing, the parties advised that the tenant moved from the rental unit the day before this hearing, and as such, the tenant's application for an order cancelling a notice to end tenancy for unpaid rent is withdrawn, and the landlord's application for an Order of Possession is also withdrawn. I hereby dismiss those portions of the applications accordingly.

The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The parties also provided evidence in advance of the hearing, and with the consent of the tenant, the landlord's evidence package that was received later than permitted under the Rules of Procedure, as well as all other evidence has been reviewed and is considered in this Decision.

### **Issue(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?

Is the landlord entitled to retain the security deposit in full or partial satisfaction of the claim?

## **Background and Evidence**

This fixed term tenancy began on September 1, 2009 and expired on September 1, 2010, although the tenant actually moved into the rental unit on August 9, 2009. The undisputed evidence of the parties is that the tenant moved in early for free in exchange for cleaning the rental unit. After September 1, 2010, the tenancy continued on a month-to-month basis until January 31, 2011. Rent in the amount of \$750.00 was originally payable in advance on the 1<sup>st</sup> day of each month, however was increased to \$774.00 on January 1, 2011. On August 8, 2009 the landlord collected a security deposit from the tenant in the amount of \$375.00.

The landlord testified that the main concern is unpaid rent. She stated that the tenant is in arrears \$375.00 for the month of January, 2011. She also stated that the door in the small bedroom of the unit is off the hinges and the frame is damaged and falling apart. Further the wallpaper in the bathroom was painted over and is hanging. It needs to be re-papered and painted. There is also a hole in another bedroom wall in the drywall about 1 ½ inches by 1 ½ inches. A carpenter was called to do repairs in the bathroom and told the landlord that the type of wall paper in that room does not allow for painting over. She further testified that the carpets need cleaning; the tenant had cleaned the carpets in October but had a dog that died, although she doesn't know when.

The landlord further testified that a move-in condition inspection report was completed which does not include a broken door frame. She also testified that the unit was cleaned prior to the tenant moving in.

The landlord claims \$700.00, being \$375.00 for unpaid rent and applies to retain the security deposit of \$325.00 to repair the bathroom and clean carpets although no receipts or quotes for the work has been provided.

The tenant testified that the condition inspection report completed at move-in was a very quick walk-through for major damages, and the parties did not look at details. She denied that anything had been cleaned prior to her moving in.

The tenant also testified that the previous tenants had a dog and she cleaned dog hair out of the carpet. She stated that she cleaned the carpets in October, 2010 and her dog died in April or May, 2010. She also took off the wall paper and found mac tac under it which wouldn't come off. She agreed to fix it and gets a discount on paint from work.

The tenant further testified that the fan in the bathroom didn't work at all and the mac tac and moisture in the room caused the problems, not the tenant, as evidenced by mildew in the room. She stated that the material is like paper Mache.

The tenant also testified that she is allergic to bees and a large nest was noticed in the wall. A small hole was made in the wall to spray. She didn't tell the landlord about it because in her experience it took the landlord too long to get repairs done and she was concerned about her safety and health due to the allergy. She also testified that it took the landlord over a year to fix the wall with the air conditioning unit. A hearing was convened and it still took the landlord months after that to get it fixed.

The rental unit is a 40 year old trailer with no renovations done except for an addition that has no heat. She stated that she held back \$375.00 from her rent because she could not afford to leave it with the landlord and she knew the landlord would try to retain it.

The tenant further testified that she was on a boil water advisory for 9 months and has 3 children. The water was shut off several times and there was no power to the unit from 9:00 a.m. to 9:00 p.m. She asked the landlord who told her to take her complaint to the park. The tenant felt that the landlord should talk to the park.

The tenant further testified that realtors attended at the residence without proper notice. Further, a carpenter or someone wearing knee pads entered her unit with muddy shoes.

### **Analysis**

With respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the application has been made prematurely. The parties are required by the *Act* to conduct a move-out condition inspection report which would provide the tenant an opportunity to correct any damage or cleaning required. Further, the landlord and tenant may be able to settle any dispute between them with respect to damages, and if I were to make an order now, the landlord would not be entitled to make any further claims with respect to damages after the move-out condition inspection report is completed. Therefore, the landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

With respect to the landlord's application for a monetary order for unpaid rent or utilities, I find that the tenant, by her own admission is in arrears of rent in the amount of \$375.00. The landlord is also entitled to recover the \$50.00 filing fee from the tenant for the cost of this application.

**Conclusion**

For the reasons set out above, I order that the landlord retain the security deposit in the amount of \$375.00 in full satisfaction of the landlord's claim for unpaid rent, and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00. 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: February 15, 2011.

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Residential Tenancy Branch