



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF, O
Tenant: MNSD, FF, O

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 a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or part of the pet damage deposit or 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 return of all or part of the pet damage deposit or security deposit, for a monetary order for loss of peace and quiet enjoyment, and to recover the filing fee from the landlord for the cost of this application.

Both parties attended the conference call hearing, provided 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 however the package provided by the tenant was not provided to the landlord and therefore cannot be considered. All other 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?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Is the tenant entitled to a monetary order for loss of peace and quiet enjoyment?

Background and Evidence

This month-to-month tenancy began on July 3, 2010, although the tenant did not move into the rental unit until July 6, 2010, and ended on September 4, 2010. The rental unit is a suite in a 5-plex apartment building. The landlord also resides in the building. Rent in the amount of \$1,175.00 per month was payable in advance on the 29th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$587.50 as well as a pet damage deposit in the amount of \$587.50.

The landlord testified that the tenant provided her written notice to vacate the rental unit by personally handing it to the landlord on September 1, 2010, and the landlord started advertisements in the Langley Times and on Craig's List by September 15, 2010. He also stated that the tenant "flagged" the Craig's List advertisements, meaning that viewers would see the flag as a caution to not reply to the advertisement.

The landlord testified that on September 4, 2010 the tenant called him and asked to meet the next day. They met alone, and at that time, the tenant demanded return of \$1,200.00 of the security and pet damage deposit, but the landlord insisted that the parties conduct a move-out condition inspection report. The landlord brought with him a witness. The tenant video-taped and audio taped the meeting on her Blackberry. He stated that the tenant also attempted to have her own witness there, but was unable to find someone. The landlord also testified that when the parties disagreed on an item on the report, the tenant became upset and said she was being terrorised. She called the police, who showed up and consequently the move-out condition inspection report was not finished past the 1st of 3 pages.

The landlord further testified that he noted stains on the carpet in the living room. The tenant had 2 dogs, one of which was elderly and stayed indoors. That dog vomited and urinated and desecrated on the carpets during the tenancy. He stated that he talked to her about it before the tenancy began, and he provided an addendum, which the parties both signed prior to the commencement of the tenancy. That addendum, a copy of which was provided in advance of the hearing, states: "The landlord reserves the right at any reasonable hour to enter an apartment without prior notice to confirm wellbeing of pets," and another addendum contains a clause which states: "To mitigate significant utility cost increases subsidized by the landlord, without increments in rental charges,

the landlord reserves the right to enter an apartment at any appropriate hour in the tenant's absence for the purpose of reprogramming scheduled utility service, or to turn off any and all utilities remaining operating during a tenant's extended absence."

The landlord further testified that he received the tenant's forwarding address by mail on November 4, 2010, and he mailed the tenant a final opportunity to finish the move-out condition inspection report on November 4, 2010 to that address which stated that the move-out inspection would be completed on November 10, 2010. The tenant did not show up and the landlord completed it in the absence of the tenant on November 18, 2010. He had a witness attend in place of the tenant, and had the witness sign the move-out condition inspection report. A copy of the move-in/move-out condition inspection report was provided in advance of the hearing.

The landlord also testified that the tenant had steam-cleaned the carpets many times, but didn't get the water fully out and the carpets and underlay rotted as a result. He attended the unit twice with a professional carpet cleaner to fix the carpets, but the tenant turned them away. The carpet is about 1000 square feet and was about 2 years old when the tenant moved in. The landlord claims \$5,162.32 to replace the carpets and testified that the quote provided is for that amount and is not a higher grade of carpet. Photographs were also provided, however the quote is for 128 square yards, which amounts to 333 square feet.

The landlord also testified that the tenant painted a main wall in the living room of the unit a pink colour, without permission from the landlord. The landlord claims \$240.80 for repainting, and provided a receipt for that service.

The landlord also claims \$180.32 for cleaning the unit and provided a receipt for that service. He stated that the tenant left numerous items behind, including items and food in the cupboards and fridge, as well as items left by her in another unit which she had access to. He stated that he had left the door to the neighbour's unit open, and the tenant put some of her garbage and items into that unit. He found mail in a garbage bag addressed to the tenant and provided photocopies of that as evidence to support that claim. He further stated that the unit has no garbage pick-up, and claims \$96.60 for garbage hauling and provided a receipt for that service. He also provided photographs to support those claims. He also claims \$45.00 for dog damage to the front lawn.

The tenant testified that the landlord's invoices for painting and for rubbish removal are forged invoices. She stated that she called the companies to verify and they both denied doing the work.

The tenant also testified that the landlord entered her unit on August 16, 2010 to do repairs in the bathroom, which was her first day back from vacation. He returned the next day to complete the repairs, and when she arrived home at about 5:30 p.m. he was still there, she asked how long he would be, and he yelled profanities at her. The tenant claims \$1,200.00 for her loss of quiet enjoyment.

The tenant further testified that the carpet didn't dry properly after she had cleaned them around the second week of August, 2010, and that the landlord had agreed to have a professional carpet cleaner attempt to clean them; she agreed to reimburse the landlord, but found a remedy on the internet and did it herself. She stated she did not refuse the professional cleaner, but the landlord agreed that it looked fine. She only cleaned the carpet twice, being at the commencement of the tenancy and again in mid-August.

The tenant also testified that on September 5, 2010 when the parties met, she gave the landlord 2 gate transmitters, for her unit and the adjoining unit, along with her door key by personally handing it to him prior to commencing the move-out condition inspection report. She stated that she was afraid of the landlord and that he harassed her about the carpets from the beginning of the tenancy and continuing throughout the tenancy.

The tenant also testified that the photographs provided by the landlord are fabricated. She stated that some of the photos are not of her unit.

The tenant also testified that she called the police on August 29, 2010 to report of the landlord's yelling and swearing at her on August 17, 2010. She was frightened and thought she should report it. The police officer then advised her to move right away, and was very concerned. The tenant also sought assault charges, which is why she moved without notice. She found the landlord in her kitchen shortly after she moved in.

The tenant also testified that the addendum has her signature pasted; that she did not sign that document and it has been forged by the landlord. She stated that the landlord had permission to do renovations or repairs on August 16 and 17, 2010.

The tenant also testified that the landlord placed her initials on the move-out inspection report. She stated that when she returned to clean, the landlord offered her \$600.00 of her security deposit and then wanted more rent money. She stated that the landlord also told her to go without cleaning.

The tenant did not video the move-out condition inspection with her Blackberry; it didn't work. She stopped the move-out condition inspection because the landlord became accusatory about a railing. She resided there for 2 months and no damage was done.

The tenant also testified that an Affidavit provided by the landlord is also forged. She provided a letter from the notary whose name appears at the bottom and he states that he did not witness the Affidavit and that he was not even in the country at the time. She stated that the landlord's package is staged and that some of the photographs are recognizable as the neighbour's unit. She stated that the photographs provided by the landlord showing bleach on the carpet are not hers. Further, she stated that the landlord had told her when she moved in that the carpet was 10 or 12 years old at that time.

The tenant also testified that some of the documents in the landlord's evidence were not provided to her, specifically the documents at Tabs 11 to 15. She stated that the landlord had her phone number and address, but she does not know how he got it. She further denied flagging the landlord's advertisements on Craig's List.

The tenant also testified that she called the City of Vancouver enquiring about the person, a retired firefighter for the City of Vancouver, who provided a letter at the request of the landlord, at Tab 21 of the landlord's evidence package. She testified that the City advised that this person never worked there, nor was the person in the firefighter's union, and states that the landlord has again fabricated evidence.

The tenant also testified that she did not put any garbage or items in the neighbouring unit, and claims that the landlord planted it there. The mail shown by the landlord's evidence arrived after the tenant had moved.

The tenant called a witness who testified that the tenant had faxed to her an invoice dated September 20, 2010 with her company's logo on the top. The witness stated that she works for this company and described the invoice that the tenant faxed to her. She further confirmed that the invoice was not made by her company, and that the logo is identical to the advertisement in the Yellow Pages and appears to be a "cut and paste" copy. She stated that all of the invoices from that company are completed on the computer, and no invoices are hand-written like the invoice provided. She further testified that her company does not do home or residence cleaning or clear garbage, and that the invoice faxed to her includes clearing garbage/furniture to the driveway.

The tenant called another witness who called into the conference call hearing from Saskatchewan. The witness testified that she was visiting her sister at the complex and visited the tenant's unit as well during the later part of August or early September, 2010, and that they visited often. She stated that when she was there the carpets were clean, and there was no damage other than mould and lifting tiles. She stated that the day before the tenant moved out the landlord entered the unit. She stated it was raining,

and the landlord walked in with muddy boots. She also testified that there were no bleach stains on the carpet.

The witness also testified that the condition of the outside of the unit showed holes in the grass, and that the landlord had goats, donkeys and 2 big dogs. She stated that the tenant had asked her to stay overnight, and that she has never felt safe around the landlord; he looks in windows, and she feels he's spying, leaving an unsafe, uncomfortable feeling. She also testified that one day during the tenancy, the landlord saw her car while she was at her sister's home and had inquired as to whom it belonged to. The witness's sister had gone out, and when the witness came out of the bathroom the landlord was in the suite. He told her he thought no one was home and had an open-door policy with his tenants. When questioned about dog vomit, the witness testified that the only vomit she witnessed was outside.

The tenant called another witness who testified that she visited the tenant alot. She stated that in mid-August she witnessed an area rug and some throws over the carpet to protect it in the tenant's unit. She stated that the carpet was clean, however the dog got sick on it about 1 week after the tenant moved in. The tenant had called the witness, and the tenant had cleaned it and it remained clean until she moved out. She further testified that she was at the unit the day before the tenant moved out. She further testified that she has known the tenant's dog since he was a puppy, and he is now an old dog, but not sick. She never witnessed the tenant's dog dig, and confirmed that the landlord has a big dog. She stated that she was generally visiting during the day during July and August, and slept over twice. She was off work in August and spent alot of time there. She also testified that the tenant had confided in her that she was afraid and intimidated by the landlord who yelled and swore at her a number of times. The tenant had also called her and confided that the landlord entered into the rental unit when the tenant wasn't there, and that the tenant didn't know when he was entering and that he didn't respect the tenant's privacy.

The witness also testified that she was present when the landlord and tenant discussed painting the rental unit. She stated that the landlord painted the walls and the tenant painted the trim, and that the painting was done together. At the outset of the tenancy, some walls were covered in wall paper, and the landlord had stated that he was going to paint. When questioned about what the landlord said, the witness stated that the landlord told her that he did the rolling and the tenant did the trim. The witness also testified that the paint done by the tenant was not pink, it was definitely beige.

Analysis

In the circumstances, and after hearing the testimony of the parties and the witnesses, I find that the evidence package provided by the landlord is questionable and cannot be relied upon. I accept the evidence of the tenant's witnesses that the invoice is not a valid invoice. I further find that the Affidavit was not sworn by the notary whose signature appears on the bottom, and the letter provided by a witness for the landlord is not truthful. I therefore also find that the tenant's evidence that her signature on the Addendum to the tenancy agreement was added, as well as the initials of the tenant that appear on the Addendum and the move-out condition inspection report, is believable. I also accept the evidence of the tenant that she returned the lock and gate transmitters.

The landlord would also have me believe that the tenant's dog caused damage to the lawn however I have since heard evidence of goats, donkeys and the fact that the landlord also has 2 dogs of his own on the property. I find that the landlord has failed to establish any damage by the tenant or her pets during this 2 month tenancy, and the landlord's application for a monetary order for damages is hereby dismissed without leave to reapply.

The *Residential Tenancy Act* requires a tenant to pay rent when it is due even if the landlord fails to comply with the *Act*, regulation or tenancy agreement, and therefore I find that the landlord's application for unpaid rent is justified. The tenant did not provide sufficient notice as required under the *Act*, and the landlord is entitled to \$1,175.00 for unpaid rent.

The *Act* also requires the landlord to return the security deposit or apply for dispute resolution within 15 days of the later of the date the tenancy ends or the date the tenant provides the landlord with a forwarding address in writing. In the circumstances, the tenant testified that she does not know how the landlord got her forwarding address, but the landlord testified that he received it on November 4, 2010. The landlord applied for dispute resolution on February 14, 2011, well beyond 15 days, and therefore, pursuant to Section 38 of the *Residential Tenancy Act*, the tenant is entitled to recover double the amount paid to the landlord, or \$2,350.00.

With respect to the tenant's application for loss of quiet enjoyment, I refer to the *Residential Tenancy Act*.

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to void or contract out of this Act or the regulations is of no effect.

And further,

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

In the circumstances, firstly I find that the tenant did not give permission to the landlord to enter the rental unit except for completing renovations on August 16 and 17, 2010. I further find that the Addendum to the tenancy agreement, a copy of which was provided by the landlord in advance of the hearing is of no effect, as it is an attempt to contract outside the *Act*. I further find that the landlord has entered the unit without legal right to do so, and has even entered for reasons beyond what is contained in the Addendum. I therefore find that the tenant has established a claim in the amount of \$1,200.00 for loss of quiet enjoyment.

I also have from the written submissions of the landlord that he takes the position that the tenant's right to claim against the security deposit is extinguished for the tenant's failure to complete the move-out condition inspection report. I find, from the evidence before me that the tenant participated in the inspection but did not stay to complete it. Her evidence is that she didn't stay due to the accusations and intimidation by the landlord. The tenant did participate to some extent, and therefore I cannot find that the tenant's right to claim the security deposit is extinguished.

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.

The landlord's application for an order permitting the landlord to retain the security deposit or pet damage deposit is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent or utilities is hereby granted in the amount of \$1,175.00.

The tenant's application for a monetary order for loss of quiet enjoyment is hereby granted in the amount of \$1,200.00.

The tenant's application for recovery of the security deposit and pet damage deposit is hereby granted in the amount of \$2,350.00. I further order that the amounts be set off from one another pursuant to Section 72 (2) of the *Residential Tenancy Act*, and I hereby grant a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in favour of the tenant in the amount of \$2,375.00. This Order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partially successful with their claims, I decline to order that either party recover the filing fee.

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: March 08, 2011.

Residential Tenancy Branch