

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD, 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 a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord return double the amount of the security deposit or pet damage deposit; and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the conference call hearing, and the landlord was assisted by her son who did not testify. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence 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 security deposit or pet damage deposit in full or partial satisfaction of the claim?

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

Is the tenant entitled to an order that the landlord return the security deposit or pet damage deposit or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on January 15, 2007 according to the tenancy agreement, a copy of which was provided in advance of the hearing, however the tenant testified that he didn't actually move in until January 20 or 21, 2007 but was required to pay half a month's rent for that month. The tenancy ended on November 30, 2009. Rent in the amount of \$500.00 per month was payable in advance on the 1st day of each month in addition to utilities payable to the landlord. On January 22, 2007 the landlord collected a security deposit from the tenant in the amount of \$275.00. The tenant had a dog, but no pet damage deposit was collected by the landlord. No move-in or move-out condition inspection was completed by the parties.

The landlord testified that when the tenant moved in, he required the landlord to keep the utilities in her name, pay the bills and then collect the amounts of those bills from the tenant. The landlord claims \$175.00 for administrative costs associated with that service, but is not included in the tenancy agreement.

The landlord further testified that the tenant gave her verbal notice to vacate the unit at the beginning of November, 2009, and that he moved out of the rental unit on or about November 30, 2009.

The landlord further testified that upon moving the tenant did not clean the unit or have the carpets shampooed. He also left his unlicensed vehicle parked on the boulevard outside of the rental property for about a year. The landlord provided a receipt in advance of the hearing showing that she paid the new tenant \$150.00 for cleaning the unit and shampooing the carpet after the tenant had moved out.

The landlord claims \$500.00 in unpaid rent, \$175.00 for administrative costs associated with the payment and collection of utilities, \$150.00 for cleaning the unit and shampooing the carpet, and \$50.00 for recovery of the filing fee for the cost of this application. She also stated that she wrote a cheque payable to the tenant in the amount of \$125.00 for the return of the security deposit less the cleaning bill of \$150.00 and she expected the tenant would pick it up, but he didn't, and the cheque has not been cashed.

The tenant testified that he actually moved in on January 20 or 21, 2007 and at that time the landlord's husband told him that he had to pay for a half a month. He further testified that cleaning was still in progress when he moved in.

The tenant further testified that he visited with the landlord at the end of October, 2009 and gave his written notice at that time, but did not provide a copy of that notice.

He further testified that he did not shampoo the carpets because the unit was very small, his furniture covered most of it, and he kept throw rugs over the traffic areas. He stated that his dog is a medium sized dog, a border collie.

He further stated that on December 9, 2009 the landlord called him and the parties met that day and there were no discussions about money owed. The landlord called him again on December 29, 2009 to advise that the utility bills had arrived, and he attended to pay the landlord.

Analysis

The *Residential Tenancy Act* states that a landlord must receive in writing a tenant's notice to vacate the rental unit the day before rent is due under the tenancy agreement. I have no evidence before me to prove what date the landlord received that notice, and the landlord's evidence is that she never did receive notice in writing, just a verbal notice at the beginning of November, 2009. The tenant disputes that evidence, but has not provided me with proof by way of a copy of the written notice that he states he provided to the landlord. In the circumstances, I find that the tenant has not established that he provided the notice prior to the 1st day of the month, and therefore the landlord's application for a monetary order for unpaid rent is justified.

The *Residential Tenancy Act* also states that if the landlord fails to complete a move-in condition inspection report or a move-out condition inspection report, and the onus is on the landlord, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord did not cause the inspections to take place and I must therefore find that the landlord's right to claim against the security deposit for damages is extinguished. I also find that the tenant paid more than half a month's rent toward a security deposit which is contrary to the *Act*.

With respect to the landlord's claim for damages, I find that the tenant is not required to leave a rental unit in pristine condition, but is required to leave the unit reasonably clean except for reasonable wear and tear. I also refer to the Residential Tenancy Policy Guidelines which states that if a tenant resides in a rental unit for over a year, or if the

tenant smoked in the unit, or if the tenant had pets that were not caged, the tenant could be expected to clean the carpets. Although I accept the evidence of the tenant that he put throw rugs down to protect the carpet, I also find that the tenant resided in the rental unit for in excess of a year and had a pet that was not in a cage and the tenant admitted he did not clean the carpets. Further, I have the evidence of the landlord that she paid a carpet cleaning company to clean the carpets at the rental unit on January 17, 2007, being either 3 days prior to the commencement of this tenancy, or 2 days after the commencement. Therefore I find that the tenant is responsible for carpet cleaning. However, because the landlord did not complete a move-in condition inspection report, I have no evidence before me to prove the condition of the unit at the beginning of the tenancy, and the receipt for cleaning includes carpet cleaning and general cleaning, and the appliances and ceiling fan are specifically noted on the invoice. There is no breakdown of how much was for carpet cleaning, and I find that half the invoice is justifiable in the circumstances.

I further find that the tenancy agreement does not provide for administrative costs associated with the landlord paying or collecting money toward utilities, and therefore, the landlord's application for those costs must be dismissed.

With respect to the tenant's claim for double return of the security deposit, the *Act* also states that if a landlord does not apply for dispute resolution to claim against the security deposit or return it to the tenant within 15 days of receiving the tenant's forwarding address in writing or the date the tenancy ends, whichever is later, the landlord must pay double the amount of the security deposit to the tenant. The testimony before me is that the tenancy ended on November 30, 2009, the tenant provided his forwarding address in writing on November 26, 2010, and the landlord testified that she received it on November 29, 2010. The landlord did not apply for dispute resolution until February 14, 2011. Therefore, I must find that the landlord did not apply for dispute resolution or return the security deposit within the 15 days provided for in the *Act*, and the landlord must return double the amount to the tenant.

In summary, I find that the tenant is responsible for one month of rent in the amount of \$500.00 and \$75.00 for carpet cleaning; the landlord is responsible for double the amount of the security deposit collected, or \$550.00 plus interest on the base amount of \$275.00, totalling \$8.08. The landlord's application for administrative costs with respect to the utilities is hereby dismissed. Pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I order that the amounts be set off from one another. Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of these applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord in the amount of \$16.92 pursuant to Section 67 of the *Residential Tenancy Act*. 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: March 09, 2011.

Residential Tenancy Branch