



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD

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 for an order permitting the landlord to retain all or part of the security deposit or pet damage deposit.

The landlord and the male tenant both attended the conference call hearing. The tenant stated that he wished counsel to attend and applied to adjourn the hearing. When asked why his counsel could not attend today, the tenant responded that he had had an injury and did not speak with counsel until recently. When asked why the other named tenant could not have retained counsel sooner, he responded that he would be handling the dispute, not his wife.

The tenant also indicated that the landlord had illegally served the Landlord's Application for Dispute Resolution and notice of hearing documents, because, under the *Indian Act*, a person cannot serve legal documents on First Nations land without the consent of the Band, and no consent was sought or given. The landlord argued that the tenants were not served on reserve land; the property that the tenants currently reside on is owned by a Native person, the property is privately owned within the city and is not on reserve land. He stated that a land claim is in dispute for that property and may not be resolved in our lifetime. The male tenant was personally served on January 28, 2011 and the female tenant was present, although the package for the female tenant was given personally to the male tenant as well.

In the circumstances, I found that the tenants had almost 2 months to retain counsel prior to the commencement of the hearing, and an adjournment was not granted. The tenant then abandoned the conference call hearing at 9:45 a.m. and the hearing continued in the absence of either of the tenants.

The landlord gave affirmed testimony, and provided evidence in advance of the hearing. 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?

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?

Background and Evidence

This month-to-month tenancy began on May 1, 2008 and ended on January 31, 2009 or February 1, 2009. The landlord stated that no notice was provided by the tenants to vacate the rental unit, and when the landlord attended the rental unit to collect rent on February 1, 2009, the tenants had vacated the rental unit. He stated that he had spoken to the male tenant a few days prior, and the tenant stated to him that he had concerns after finding out that another tenant in the lower unit had been charged with using counterfeit money, and the tenant was not comfortable with having a "criminal" residing in the same house. The landlord responded to the tenant that the other tenant would be moving out in a few days.

The landlord further testified that rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month, and the tenants were also responsible for the payment of utilities. The landlord provided copies of utility bills in the amount of \$381.07, \$229.11 for natural gas, as well as \$106.40 and \$57.67 for hydro. Also, the tenancy agreement states that the landlord pays the first \$140.00 of each quarterly bill, and the landlord is claiming \$25.92 being half of the bill less the \$140.00 that the landlord was responsible for. He stated that the house heats with gas and the landlord gave the tenant personally a request for payment of the utilities with a copy of the bills on May 5, 2009.

The landlord also claims \$100.00 for cleaning the carpet, and provided an invoice in the amount of \$180.00 that shows the cleaner determined there was urine on the carpet in the bedroom. The landlord also testified that the other \$80.00 is for another unit, and does not claim that amount from these tenants.

The landlord also testified that the toilet seat was broken during the tenancy, and provided a receipt for replacement of that item in the amount of \$27.78.

The landlord also testified that the unit was painted in 2006, and the tenants had decorated the unit with wall hangings, posters, and burned incense in the rental unit. The tenants did not take care when removing the decorations and the walls were heavily marked where tape peeled the paint and left nail or screw holes on the walls throughout the entire suite. He provided an invoice for painting in the amount of \$1,680.00 but stated that he is not claiming the paint in the bathroom, and therefore the amount should be reduced to \$1,530.00.

The landlord further testified that the tenants did not provide him with a forwarding address at all, the tenants abandoned the rental unit, and the landlord has not returned any portion of the security deposit to the tenants.

Analysis

Firstly, dealing with the issue of service, I find that the male tenant has failed to prove that he was served on reserve land. Further, the *Residential Tenancy Act* states that the tenants must be served with the Landlord's Application for Dispute Resolution and notice of hearing documents by one of the methods provided in Section 89, which does not include leaving the documents with another person. Therefore, I find that the male tenant has been served in accordance with the *Act*, but the female tenant has not.

In the circumstances, I find that the tenants failed to provide written notice to vacate the rental unit as required under the *Residential Tenancy Act*, and the landlord has established a claim for one month of rent, or \$1,100.00.

The *Act* requires the tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, and to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, as well as to repair damage caused by the tenants during the tenancy. I have examined the move-in/move-out condition inspection reports and I further find that the landlord has established a claim for the carpet cleaning in the amount of \$100.00, replacement of the toilet seat for \$27.78, and painting in the amount of \$1,530.00.

I have also reviewed the tenancy agreement which states that heat, electricity, water, sewage disposal and garbage collection are not included in the rent. The tenancy agreement also specifies that the tenant is responsible for one half of that portion of the quarterly water/sewer/garbage bill that exceeds \$140.00 per quarter and I find that the landlord has established that the amount that the tenant is required to pay for the quarterly utility bill is \$25.92. Having found that the tenants are responsible for rent to the end of February, 2009, I further find that the landlord has established a claim for

unpaid gas bills up to the end of February, 2009 in the amount of \$381.07 and \$229.11, for a total of \$610.18, as well as unpaid hydro bills to the end of February, 2009 in the amount of \$104.93 and half of the second bill, or \$28.83, for a total of \$133.76. I do not find that the tenants are responsible for the late fee on the hydro bill in the amount of \$1.47 because the bill is in the landlord's name. Further, I cannot find that the tenants are responsible for the entire hydro bill provided, but only up to the end of February, 2009.

In summary, I find that the landlord has established the following claims:

- \$1,200.00 for unpaid rent;
- \$100.00 for carpet cleaning;
- \$27.78 for a new toilet seat;
- \$1,530.00 for painting the unit;
- \$25.92 for the quarterly water/sewer/garbage bill;
- \$610.18 for unpaid gas bills;
- \$133.76 for unpaid hydro bills;

for a total of \$3,627.64.

Conclusion

For the reasons set out above, I hereby order that the landlord retain the security deposit and interest totalling \$555.93 and I grant the landlord a monetary order as against the male tenant only for the balance due of \$3,071.71. 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 24, 2011.

Residential Tenancy Branch