



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and for damage to the unit, site or property, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on November 04, 2010. Mail receipt numbers were provided in the landlord's documentary evidence for all four tenants. The tenants were deemed to be served the hearing documents on November 09, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and her interpreter appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the rental unit, site or property?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Through her interpreter the landlord testifies that this month to month tenancy started on November 01, 2009 and ended on June 30, 2010. The tenants rent for this unit was \$1,100.00

per month which was due on the first of each month plus 50% share of the utilities. The tenants paid a security deposit of \$550.00 and a pet deposit of \$500.00 both on November 01, 2009. A move in condition inspection was completed at the start of the tenancy with one of the tenants however at the end of the tenancy the landlord testifies that the tenants refused to let her inspect the unit and did not attend the inspection which was carried out after the tenants moved out. The tenants were given two opportunities to attend an inspection but failed to do so.

The landlord has provided an agreement signed by the female tenant which details the rent and some of the utilities outstanding and gives the landlord permission to keep the security deposit and pet deposit to a total sum of \$1,050.00.

The landlord testifies that the tenants did not pay their share of the TELUS bill for six months in 2010. The bills came to \$355.44 and the tenant's share of this is \$177.77. The tenants did not pay their share of the Terasan Gas bill for May (\$38.62) and June (\$24.61), 2010. Their 50% share totals \$63.23. The tenants did not pay their share of the BC Hydro bill for April to June, 2010 of \$84.71 and for June, 2010 of \$22.12. the tenants total share of BC Hydro is \$106.83. The tenants did not pay their share of The Shaw cable bill from March 09, 2010 to April 08, 2010 and their total share of this bill is \$14.11. The total amount of outstanding utilities is \$361.94. The landlord testifies that she gave the tenants copies of these bills with the exception of the TELUS bill as she only received it after the tenants had moved out. The landlord testifies she also gave the tenants a demand for payment of the bills but the tenants failed to pay their share. The landlord has provided copies of these bills in her evidence and has sent them again to the tenants including the TELUS bill.

The landlord testifies that at the end of the tenancy she found the tenants had caused damage to the rental unit. The tenant's dog had ripped the deck which was covered in half wood and half laminate. The landlord testifies that she tried to repair this damage but could not do so and it was a cheaper option to replace the whole deck with laminate rather than try to replace the wood portion. The landlord estimates that the deck was approximately 15 years old. The landlord has provided a receipt to show the replacement of the laminate cost \$1,709.71; this includes removing the old laminate and installation of the new laminate.

The landlord testifies that the screen door on the deck and the dining room window screen were ripped. She states the screens were in good condition at the start of the tenancy and she is unsure how old they were as they were in place when she purchased the house in October, 2008. The landlord has provided a receipt for the new screens which includes labour costs and tax to a sum of \$112.00.

The landlord testifies that the tenants damaged the walls inside the unit which went beyond normal wear and tear. She states the walls were left with holes, some had pink smudges and black scuff marks, some were scraped and the wall paper border was ripped. The landlord states she is not charging the tenants for labour to rectify this damage but does seek to recover the cost of re-painting the walls to the sum of \$305.67 and has provided receipts for the paint and supplies.

The landlord testifies that the carpets in the unit were left dirty, stained and soaked with dog urine. The landlord states she hired a carpet cleaning company to clean the carpets but the living room carpet could not be cleaned satisfactorily and the carpet cleaner recommended that the carpets be replaced due to the urine and staining. The landlord testifies she replaced the living room carpet with laminate as this was the cheaper option. The landlord seeks to recover her carpet cleaning costs of \$246.40 and the costs for the living room carpet replacement with laminate of \$1,741.98.

The landlord testifies that the kitchen counter and linoleum were left with burn marks and will need to be replaced. The landlord seeks the opportunity to reapply for this cost as she has not yet had this work done.

The landlord testifies that the tenants left bags of garbage, broken furniture and clothing behind at the rental unit. The landlord has provided photographic evidence of this and states she cleaned this up herself and does not wish to pursue a claim for it against the tenants. The landlord also testifies the tenants broke a ceiling light but as she has lost the receipt for this she does not wish to include this in her claim.

The landlord seeks an Order to keep the tenants security deposit and pet damage deposit but testifies that the tenants have already given permission for her to keep these deposits. The landlord also seeks to recover the cost of photograph processing and registered mail fees.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me. With regard to the landlords claim for unpaid utilities, the landlord has provided sufficient evidence to show the total amount of the utilities bills for the months claimed and the 50% share that the tenants owe amounts to **\$361.94**. Consequently I find the landlord is entitled to recover this sum from the tenants pursuant to s. 67 of the *Act*.

With regard to the landlords claim for damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

It is my decision that the landlord has met the components of the above damage or loss test. The landlord has provided copies of the Move in and Move out inspection reports which detail

the condition of the rental unit and the start of the tenancy and at the end of the tenancy. The landlord has provided photographic evidence to support her claim and has provided invoices and receipts for the work carried out to rectify the damage. However, with regard to the laminate for the deck, the landlord has claimed \$1,709.71 while I agree the landlord has mitigated her loss by covering the whole deck with laminate as a cheaper option to replacing half the wood of the deck, the deck was still 15 years old and past its useful life. Consequently, this section of the landlords claim is dismissed as the deck covering would have fully depreciated.

With regard to the landlords claim for two new screens as the landlord is not able to determine the age of the screens I am not satisfied that the screens would have been new at the start of the tenancy and therefore I reduce the landlords claim to 50% for replacement costs due to an unknown depreciation to a total sum of **\$56.00** pursuant to section 67 of the *Act*.

With regard to the cost of carpet cleaning, I refer both Parties to the Residential Tenancy Policy Guidelines #1 which states a tenant may be expected to steam clean or shampoo the carpets at the end of the tenancy, regardless of the length of the tenancy, if they have pets which are not caged. As the tenants did have pet dogs and the carpet cleaner has specified on his report that the carpets were soaked in dog urine, very, very dirty and stained I find the landlord is entitled to recover the cost for having the carpets cleaned at a sum of **\$246.40** pursuant to section 67 of the *Act*.

With regard to the carpet replacement costs; a carpet generally has a life of 10 years as the landlord does not know how old the carpets were but has testified that they were in good condition at the start of the tenancy it is my decision that she is entitled to a reduced claim of due to unknown depreciation and because the carpets were in good condition at the start of the tenancy. Therefore the landlord is entitled to recover the sum of **\$870.99** from the tenants pursuant to section 67 of the *Act*.

With regard to the landlords claim for damage to the walls; the landlord has established that the tenants did damage the walls during their tenancy beyond normal wear and tear and failed to rectify this damage before they moved out. The landlord only seeks her costs for paint and supplies for repairing the damage to the walls. As such I find she is entitled to recover the sum of **\$305.67** pursuant to section 67 of the *Act*.

With regard to the landlords claim for photograph processing and registered mail fees; I find the landlord is not entitled to recover these amounts from the tenants as generally these costs are attributed to the cost of doing business.

The landlord has applied to keep the security deposit and pet damage deposits totaling \$1,050.00 as one of the tenants has signed an agreement that the landlord may keeps these deposits no Order is required from me and the deposits will be deducted from the total amount of Monetary award the landlord receives.

As the landlord has been partially successful with her claim I find she is entitled to recover her **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid utilities	\$361.94
Carpet cleaning	\$246.40
Carpet replacement	\$870.99
Damage to walls	\$305.67
Subtotal	\$1,841.00
Less security and pet deposits	(-\$1,050.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$841.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$841.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The landlords' application for costs relating to the kitchen counter and the kitchen linoleum floor are dismissed with leave to reapply.

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 07, 2011.

Residential Tenancy Branch