



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, a Monetary Order for unpaid utilities, an Order to keep the security deposit and to recover the filing fee for this application. At the outset of the hearing the landlord withdrew his application for an Order for Possession as the tenant has moved from the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant and another party on March 23, 2011. The tenant was deemed to be served the hearing documents on March 28, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*. The tenant states he did not receive the landlords' evidence but agrees he did not provide the landlord with forwarding address in writing. I explained to the tenant that he may request an adjournment to allow the landlord to reserve his evidence to him. The tenant declined this opportunity and agreed to continue with the hearing today.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2010. This was a fixed term tenancy for six months and expired on March 31, 2011. The tenants moved from the rental unit on this date. Rent for this unit was \$1,350.00 due on the 1st day of each month. The tenant paid a security deposit of \$675.00 on September 15, 2010.

The landlord testifies that the tenant has failed to pay his share of the utility bills. He states utilities are not included in the rent. However, as there are two separate units the utilities are in the landlords name and the upper unit in question has a meter and the lower unit has an information meter which records the units of electricity used each month. The landlord has provided a copy of the tenancy agreement which shows rent does not include electricity or water. The landlord has also provided a copy of the addendum to the tenancy agreement which details how the utilities are shared between the two units. The landlord states he receives a BC Hydro bill and City water bill and deducts the usage of the lower unit from the bills. The remaining balance is then owed by the tenant. The landlord presents the tenants with a breakdown of the bills and the units used and requests payment each month. The landlord has provided evidence of the utility bills and his calculations for each unit's usage in evidence. To date this tenant owes \$1,224.58 for BC Hydro and \$71.54 for City water. The tenant paid \$50.00 towards his utilities on December 01, 2010. The total amount outstanding is now \$1,246.12.

The tenant disputes that he is obligated to pay utilities to the landlord as the tenant states he does not have a contract with the utility company or the landlord concerning utilities and he did not sign the addendum to the tenancy agreement. The tenant agrees he did sign the tenancy agreement. The tenant states he cannot certify the accuracy of the landlords calculations as he has not had sight of the other tenants meter.

The landlord testifies that the tenant kept a large puppy. And he did not clean up after this dog allowing it to defecate in the yard and side deck. The landlord has provided photographs of the large amount of dog feces on the property. The landlord states he had an agreement with the tenant that the tenant must be responsible for his dog and not to allow it to defecate in the yard

and if it did, the tenant must clean up after his dog. The landlord states due to the excessive amount of dog feces left at the property he received complaints from the downstairs tenant and had concerns about hygiene issues. The downstairs tenant would not agree to the landlord just picking up the dog feces but wanted the area professionally cleaned. The landlord states he hired a cleanup company to clear the feces and sanitize the area. This cost came to \$228.48 (quote provided in evidence).

The tenant testifies that the property is located in a rural area and is unfenced. He states other dogs come into the yard and access the side deck leaving feces' behind. He states both neighbours have dogs and a stray dog also roams in the area to defecate and he is not willing to pick up after that dog. The tenant states his dog is inside the unit all day and he took his dog out for a walk to dog parks and rural areas when he was home. The tenant denies the feces came from his dog.

The landlord testifies that as tenants they are required to maintain the property and if it was stray dogs defecating in the yard the tenant should have told the landlord so he could have taken action against other dog owners. The landlord maintains that the dog feces found in the yard all comes from a large dog and the piles are all the same size and states it is the tenants' dog.

The landlord testifies the tenants' dog has caused damage to railings inside the unit. The landlord agrees the railings are not new and had some minor scratches made over the years from other tenants and their dogs but states this tenants dog has chewed or clawed the wood causing extensive damage. The landlord states he was advised to replace the railings as the cheaper option rather than have the wood individually repaired. He has provided a receipt for this work which shows a cost of \$374.81 for materials and \$582.40 for labour costs. The landlord has provided a copy of the move in inspection report which shows the unit was in good condition at the start of the tenancy. The landlord has provided photographic evidence of the damage to the railings.

The tenant testifies that the railings were already damaged by the previous tenants' dogs. He states his dog could have caused some damage but he is not responsible for all the damage. The tenant states his dog was six months old when he moved into the unit. The tenant states he

did not show up for the move out condition inspection as he was uncomfortable with the landlord and the downstairs tenant.

The landlord seeks to keep the security deposit of \$675.00 to offset against unpaid utilities and damage to the unit. The landlord also seeks to recover his \$50.00 filing fee paid for this proceeding.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; With regard to the landlords claim for unpaid utilities. I have considered the landlords evidence and find his calculations are correct. The tenant argues he is not reasonable for utilities because they were not in his name and he did not have a contract to pay the utilities. However, the tenancy agreement clearly states electricity and water are not included in the rent and the addendum clearly states how the utilities are apportioned between the two units. I also find in signing the tenancy agreement the tenant is bound by the terms and conditions of that agreement and as such is responsible for his share of the utilities. Consequently it is my decision that the landlord has established his claim for unpaid utilities to the sum of **\$1,246.12**.

With regard to the landlords claim for clearing dog feces from the yard; the tenant argues that as the yard is an open area there is no proof that this dog feces was done by his dog. In this matter I have considered the evidence and it is my decision that on a balance of probabilities that this feces was left by the tenants dog due to the consistent size of the feces shown in the pictures and therefore the landlord is entitled to charge the tenant for the cleanup of this feces to the sum of **\$228.48**.

With regard to the landlords claim for damage to the railings, I have considered the photographic evidence and both parties' arguments in this matter and the evidence does clearly show that the deeper scratches and claw marks are fresh. The move in condition inspection report does not identify this type of damage to the railings before the tenancy therefore I must conclude that this damage was caused by the tenants dog in its puppy stage and consequently the landlord is entitled to recover part of the cost of replacement railings. Due to the age of the

railings I have deducted 20% from the landlords' claim of \$957.21 and the landlord is entitled to a monetary award for the remainder of **\$765.76**.

The landlord is therefore entitled to keep the tenants security deposit of **\$675.00** in partial satisfaction of his claim pursuant to s. 38(4)(b) of the *Act*. The landlord is also entitled to recover his **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* as follows:

Unpaid utilities	\$1,246.12
Damage to railings	\$765.76
Subtotal	\$2,240.36
Plus filing fee	\$50.00
Less security deposit	\$675.00
Total amount due to the landlord	\$1,615.36

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 **\$1,615.36**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 14, 2011.

Residential Tenancy Branch