



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF, SS

Introduction

This hearing was convened by way of conference call in response to 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; 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 serve documents or evidence in a different way than required by the *Act*; and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing with legal counsel, and both tenants attended the hearing. The parties gave 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, and the landlord's counsel provided additional evidence after the hearing had concluded. All evidence and testimony provided, with the exception of the evidence provided after the conclusion of the hearing, has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord's legal counsel advised that the application for an order permitting the landlord to serve documents or evidence in a different way than required by the *Act* is withdrawn.

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?

Background and Evidence

The parties agree that this fixed term tenancy began on September 1, 2008 and expired on August 31, 2009, at which time the tenancy ended and the tenants moved out. Rent in the amount of \$2,300.00 per month was payable in advance on the 1st day of each

month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$1,150.00. The landlord testified that the unit was to be rented partially furnished, as the landlord's family was moving out of the province intending to return to the house after a year.

The landlord testified that a property manager had been retained to manage the rental unit, and the property manager returned the security deposit in the amount of \$1,150.00 to the tenants at the end of the tenancy. A move-in condition inspection report and a move-out condition inspection report were completed by the property manager, and the landlord disagrees with the property manager's decision to return the security deposit. Further, the landlord disagrees with the results shown on the move-out condition inspection report, and stated that the property manager may be sued as a result.

An addendum to the tenancy agreement was signed by the tenants and the property manager which outlined the tenants' responsibility for yard care, and the landlord testified that the tenants did not care for the landscaping in accordance with that agreement. The landlord provided photographs of the landscaping prior to the commencement of the tenancy, which show a well-kept yard with well-kept shrubbery, and photographs of the yard after the tenancy had ended, which show dead shrubbery, to support the landlord's testimony and claim for damages.

The landlord further testified that the tenants had called the property manager during the tenancy stating that there was a problem with the plumbing. The property manager called a plumber who removed hair from the drain in the ensuite sink, for which the landlord was charged \$86.10. The landlord feels that the tenants ought to have cleaned the sink rather than call a plumber, and the landlord therefore should recover that amount from the tenants.

The landlord further testified that the tenants had cleaned carpets but left stains that the property manager did not record on the move-out condition inspection report. Also, the carpets were abnormally wet and had a bad odour. The landlord provided evidence that the carpets had been cleaned and the landlord paid \$451.72 for that service prior to the commencement of the tenancy. The landlord requests that amount for the tenants' failure to properly clean the carpets at the end of the tenancy however, the landlord did not provide any evidence of the cost of cleaning the carpets after the tenancy had ended.

The landlord further testified that at the end of the tenancy, the landlord had to thoroughly clean the rental unit and then hired a professional cleaning company. The landlord also had to sand the walls and repair a hole in a wall, and provided photographs to support that testimony. The unit was inspected by the landlord on

August 24, 2010 while there was still furniture in the rental unit and the tenants were packing, and therefore not all damages were visible at that time. The landlord stated that the inspection was a short visit with the property manager present, and when questioned why the landlord did not mention displeasure of the unkempt yard to the tenants at that time, the landlord replied that the property manager was supposed to deal with it, but he refused to talk to the landlord. The landlord also stated that the contract was with the property manager, and as such, the landlord was not permitted to talk to the tenants.

The lower level, kitchen, dining room, living room and upstairs bathroom had been painted within the last 5 years prior to this tenancy.

When asked why there is such a delay between the move-out condition inspection report and the date of the landlord's application, the landlord responded that the property manager refused to give the landlord the tenants' address.

The landlord claims unpaid utilities in the amount of \$550.47, costs to repair damaged landscaping in the amount of \$844.02, replacement costs for damaged landscaping in the amount of \$460.00, painting supplies in the amount of \$169.80, labour for painting at \$538.65, missing patio furniture in the amount of \$699.00, plumbing costs in the amount of \$86.10, carpet cleaning in the amount of \$451.72, and costs to repair and clean the interior of the rental unit in the amount of \$1,250.00, for a total of \$5,049.76. Invoices for each item and proof of payment of those invoices were provided by the landlord in advance of the hearing. The invoice for cleaning is an invoice of the landlord which shows \$500.00 was paid to another person, and \$750.00 claimed by the landlord for the landlord's time and effort, both at \$25.00 per hour.

The tenants do not dispute the amount of outstanding utilities.

The tenants testified that a friend of theirs is the head grounds keeper for a golf course, who looked at the watering system at the rental unit and set the timing in early May, 2009. They further testified that the water bill proves that the tenants watered the lawns and plants, but there was a significant snow fall in the winter months during the tenancy. The watering system was turned off before the tenants moved in, and the tenants wanted to ensure the yard was watered, and zone by zone on the panel, the tenants' friend estimated how many minutes each should be set to, and he located the main valve. The tenants also testified that in the spring, they were hesitant to pull plants not knowing which plants were weeds and which were perennials.

The tenants also testified that they cleaned the rental unit prior to vacating and had friends and family helping. A professional carpet cleaner was paid about \$300.00, but the tenants provided no receipt prior to the hearing. They also stated that all rooms were cleaned on August 31, 2009. The tenants each had 3 children, and some were there occasionally, but not full time. The tenants had no pets.

Analysis

I have reviewed the evidence provided by the parties including the move-in and move-out condition inspection reports. When comparing the reports to the photographs, I find that there is no comparison.

With respect to the landscaping and yard care, the tenants did not keep up that maintenance to the satisfaction of the landlord, and under the *Act*, the tenants are required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. Tenants are also required under the *Act* to repair any damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. Tenants are not required to leave a rental unit in a pristine condition that would satisfy a landlord for moving into or showing to perspective tenants or purchasers; that is the responsibility of the landlord. However, in this case, the tenants signed an addendum to the tenancy agreement wherein they contracted to ensure that the lawns were mowed, weeding was done, and that watering and pruning were looked after. The *Act* also states that parties cannot contract outside the *Act*, and that any attempt to do so is of no effect. Therefore, the landlord cannot necessarily expect tenants to provide annual bedding plants or soil, or to maintain pruned hedges and shrubs to a standard set by the landlord's annual pruning, as stated in the addendum because that may go beyond reasonable health and cleanliness.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

Also, I must ensure that any award does not place the landlord in a better financial position that the landlord would be in had the damage or loss not occurred.

The landlord takes the position that the move-out condition inspection report cannot be relied upon because it does not accurately reflect the condition of the unit after the tenants had moved out. When comparing the report to the photographs, I find that the landlord's testimony in that regard is correct. Neither of the condition inspection reports show a hole in a wall, scratches on door frames and walls, stains on the carpet, missing or broken light fixtures, unclean linoleum, or dead landscaping, that the photographs show. To further support those items, the landlord provided other evidence, such as letters to the property management company and invoices or receipts with reasonable dates and proof of cost.

In the circumstances, I find that the landlord has established a claim for painting supplies in the amount of \$169.80, and replacement costs for damaged landscaping in the amount of \$460.00.

With respect to the landlord's claim for carpet cleaning in the amount of \$451.72, the landlord has provided evidence of the cost before the tenants moved in, but have provided no evidence of the cost after the tenants had moved out. The copy of the cheque provided by the landlord shows that the payment was for "house and carpet," but doesn't state that it was for carpet cleaning alone. Therefore, I find that the landlord has failed to establish element #3 in the test for damages.

With respect to the landlord's claim for labour for painting at \$538.65, I find that the landlord has provided two invoices, and the one for \$538.65 contains a date of December, 2010, which is well over a year after the tenants moved out of the rental unit. I find that the landlord has failed to establish that cost. However, the landlord's Monetary Order Worksheet shows a claim for the repair of damaged landscaping in the amount of \$844.02, yet the description on the invoice shows, among other things, "Labour for the 2 rooms (25 hours) X 25" and "Labour for the bathroom and room (7 hours) X 25," which I cannot attribute to landscaping. The landlord testified that there was no invoice for yard repair, and therefore, I find that the landlord or the landlord's counsel has made a typographical error in the Monetary Order Worksheet, and the invoice is for painting in September, 2009 which is consistent with the evidence that the tenants moved at the end of August, 2009, and I find that the landlord has established a claim for painting in the amount of \$844.02.

With respect to the plumbing costs, the *Act* states that a landlord is responsible for maintaining a rental unit, however, the tenant is also required to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit during the tenancy. I have read the email from the property management company that states the tenants had been in the rental unit for less than a year prior to the clogged drain, and therefore, I cannot conclude that the landlord has met element #2 in the test for damages.

With respect to the missing patio furniture, I have read the correspondence provided by the landlord, and find that it is equally as probable that the property manager had disposed of it, and therefore, I find that the landlord has failed to establish element #2 of the test for damages as against the tenants.

I also find that the landlord's claim for cleaning in the amount of \$1,250.00 is excessive and the invoice names the landlord as one of the cleaners. I also find that the invoice showing 50 hours of cleaning would equate to over 6 days of cleaning at 8 hours per day, or 3 ½ days for each cleaner. I find that the landlord would have done some cleaning in any event upon moving back into the house, and I would allow \$500.00 for the other cleaner.

The tenants have not disputed unpaid utilities in the amount of \$550.47, and therefore, I find that the landlord is entitled to recover those costs.

The landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

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

- painting supplies in the amount of \$169.80;
- labour for painting at \$844.02;
- replacement costs for damaged landscaping in the amount of \$460.00;
- cleaning costs at \$500.00;
- unpaid utilities in the amount of \$550.47; and
- recovery of the filing fee in the amount of \$100.00;

for a total of \$2,624.29.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,624.29.

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: July 11, 2011.

Residential Tenancy Branch