



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant DRI, MNR, MNDC, MNSD, FF
	Landlord MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, regulations or the tenancy agreement, for unpaid utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of their security deposit, to dispute a rent increase, to recover the costs of emergency repairs, compensation for loss or damage under the Act, regulations or the tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on May 27, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on May 13, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages or loss to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damages or loss and if so how much?
3. Is there unpaid utilities and if so how much?
4. Is the Landlord entitled to compensation for unpaid utilities and if so how much?
5. Is the Landlord entitled to retain all or a part of the Tenants' security deposit?

Tenant:

1. Is the Tenant entitled to the return of part or all of her security deposit?
2. Is the Tenant entitled to the return of the rent increase and if so how much?
3. Is the Tenant entitled to compensation for loss or damage and if so how much?
4. Is the Tenant entitled to compensation for emergency repairs and if so how much?

Background and Evidence

This tenancy started on October 1, 2005 as a month to month tenancy. Rent was \$570.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 on September 28, 2005. The Tenant said she moved out of the rental unit on August 15, 2009.

The Tenant said they moved out of the rental unit as result of the Landlord issuing her an eviction notice dated July 31, 2009. The eviction notice is not a proper Eviction Notice, but the Tenant said she viewed it as the Landlord was evicting her. The Tenant said she moved out of the rental unit August 15, 2009, she meet with the Landlord on August 15, 2009 to do the move out inspection and to return the keys. The Tenant said the Landlord did not do the move out condition inspection and he said he forgot his cheque book so he could not return her security deposit. The Tenant continued to say the Landlord agreed to meet her a second time to do the inspection. The Landlord said they met on August 16, 2009, but again the inspection did not happen. The Tenant said the Landlord would not return her security deposit therefore she applied for dispute resolution on May 19, 2011. The Tenant is claiming compensation for the following items:

Double the security Deposit (2 X \$250.00)	\$ 500.00
Rent increase of \$30.00 From February to August, 2009	\$ 210.00
Replacement of the front door	\$ 100.00
Motel costs	\$ 200.00
½ month rent for August, 2009	\$ 285.00
Filing Fee for this proceeding	\$ 50.00
Total	\$1,345.00

The Tenant said the Landlord increased her rent in August, 2009 by \$30.00 to cover insulation costs in the rental unit. The Tenant said the Landlord did not give her a written notice of rent increase. The Landlord agreed he increased the rent by \$30.00

with no written notice. The Landlord said he and the Tenant had agreed to the increase.

The Tenant said the front door was damaged during her tenancy as she said someone tried to break in to the rental unit and in the process damaged the door. The Tenant submitted a hand written invoice from a handy man T.K. for \$100.00 for the repair. The Tenant said she believes the Landlord should be responsible for this repair although she said she did not give the repair receipt to the Landlord and she did not request that he pay it until her application. The Landlord said the Tenant damaged the door during the tenancy and she is responsible for the repair of the door.

The Tenant continued to say that the plumbing froze in the rental unit when it was very cold and as a result she and her son had to move to a motel for two nights when the pipes were frozen in the rental unit. The Tenant provided receipts for the motel rooms in the amount of \$112.70. The Landlord said he was not told about this and he did not agree to it. The Tenant said she did tell the Landlord that she was going to a motel by telephone, but she did not give the Landlord the receipts nor did she ask him to pay the motel costs until this application.

In addition the Tenant said she has applied for half of August, 2009 rent back as she moved out of the rental unit August 15, 2009 because of the Landlord notice to evict her. The Landlord said the letter he wrote the Tenant was a warning; that if the Tenant continued to breach the tenancy agreement then she would be evicted one month from July 31, 2009. The Tenant is claiming \$285.00 of rent.

The Landlord said he is claiming unpaid utilities of \$227.96 and cleaning costs of \$328.00 as well as the filing fee for this proceeding of \$50.00. The Landlord included a utility bill in his evidence the bill shows a billing date of September 26, 2009 for the amount of \$227.96. The bill also shows \$194.80 is overdue for August, 2009. The Tenant said she submitted a utility bill as well showing \$86.35 owing. The Tenant bill has a billing date of July 26, 2009 on it.

The Landlord continued to say that the cleaning and repair bill is from his company and is for cleaning and repairing the rental unit. The Tenant said she cleaned the unit before she left and the only damage was normal wear and tear. Both parties submitted photographic evidence to show the condition of the rental unit at the end of the tenancy.

The Tenant said they met with the Landlord on August 15, 2009 as agreed to do the move out condition inspection and to return the keys. The Tenant said she gave the Landlord her forwarding address, but she does not have a written record of it until June 1, 2010 when she wrote the Landlord for her security deposit. The Tenant provided the letter dated June 1, 2010 and it does have her forwarding address in writing in it. The Tenant said the Landlord did not complete the move out condition inspection report. The Tenant continued to say the Landlord did not return her security deposit and as a result she has made this application to get double her security deposit of \$250.00 returned as she was told she could do this when she made her application.

The Tenant also said she was seeking the recovery of the \$50.00 filing fee for this proceeding from the Landlord.

The Landlord agreed he did not complete a move in condition inspection, but he said he completed a move out condition inspection report without the Tenant because she did not participate. The Landlord said the Tenant left the house in an unclean state so he had to clean and repair it.

Analysis

Section 23 and Section 35 say the landlord and tenant together must inspect the condition of the rental unit at the start of the tenancy and at the end of a tenancy.

(a) on or after the day the tenant starts or ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

Section 24 and Section 36 say the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with sections 23(2) and 35 (2)[2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with sections 23 (2) and 35 (2) [2 *opportunities for inspection*],

(b) having complied with sections 23 (2) and 35 (2), does not participate on either occasion, or

(c) having made inspections with the tenant, does not complete the condition inspection reports and give the tenant a copy of it in accordance with the regulations.

I find that the Landlord did not complete the move in condition inspection report or the move out condition inspection report when the Tenant was present on August 15, 2011 and August 16, 2011; consequently under sections 24 and 36 of the Act the Landlord's claim against the Tenants' security deposit is extinguished. I dismiss the Landlord's application to retain the Tenant's security deposit for compensation for damage or loss to the unit.

As well I find that the Landlord has not established the state or condition of the rental unit at the start of the tenancy therefore it is not possible to determine if the Tenants caused any damage or loss to the unit or how much damage or loss the Tenants may have caused. As a result I find that the Landlord has not established grounds to prove that the Tenants solely caused any damage or loss to the rental unit beyond normal wear and tear. The Landlord's application for compensation for damage or loss to the rental unit under the Act, regulations or tenancy agreement is dismissed without leave to reapply.

With regard to the unpaid utilities I find the Tenant has unpaid utilities as per the August 26, 2011 balance of \$194.80. The Tenant is responsible for these unpaid utilities and these costs will be deducted from any moneys owed to her by the Landlord.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenant's testimony that she gave the Landlord a forwarding address in writing on June 1, 2010. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by June 15, 2010 to retain the Tenant's security deposit. Consequently I find for the Tenant and grant an order for double the security deposit of \$250.00 in the amount of $\$250.00 \times 2 = \500.00 .

Further I find that the Landlord did not give a written Notice of Rent Increase to the Tenant 3 months prior to increasing her rent as required to do in section 42 of the Act. Consequently I find the rent increase of \$30.00 per month from February to August, 2010 is invalid and I award the Tenant \$210.00 as recovered rent.

With regard to the repair of the door I accept the parties testimony that it happened during the tenancy and the Tenant has not established that it was the responsibility of the Landlord to replace the door. I dismiss without leave to reapply the Tenant's claim of \$100.00 to repair the door.

Further I find that the motel costs and miscellaneous bills are costs that the Tenant paid, but she has not established that she discussed these costs with the Landlord prior to paying for them as Section 33 of the Act indicate. Consequently I dismiss without leave to reapply the Tenant's claims for motel costs of \$112.70 and for miscellaneous repairs of \$98.12.

With regard to the Tenant's claim for half the month rent for August, 2010 in the amount of \$285.00, the letter of eviction dated July 31, 2010 had an effective vacancy date of 1 month from July 31, 2010 or August 31, 2010; therefore I find that the Tenant had the rights to the rental unit until August 31, 2010. As a result I do not accept her claim for half of the month of August, 2010 rent of \$285.00 because she did not live there. The Tenant's claim to recover \$285.00 of rent for August, 2010 is dismissed without leave to reapply.

As the neither party was completely successful in their application I order both the Tenant and the Landlord to bear the filing fees of \$50.00 each for this proceeding which they have already paid.

In summary a monetary order has been issued to the Tenant for the following amount:

Double the Security Deposit	\$ 500.00	
Return of the rent increase	\$ 210.00	
Subtotal		\$ 710.00
Less		
Unpaid utilities	\$ 194.80	
Subtotal		\$ 194.80
Balance owing		\$ 515.20

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 67 of the Act, I grant a Monetary Order for \$515.20 to the Tenant. The order must be served on the Landlord/Respondent and is enforceable through the Provincial Court of British Columbia (small claims 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*.

Residential Tenancy Branch