



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The hearing was originally scheduled for July 27, 2011 at which time both the landlord and the tenant attended. The hearing was adjourned to today's date and again both parties attended as well as a witness for the landlord. The parties also provided evidence in advance of the hearing scheduled for September 20, 2011 to the Residential Tenancy Branch and to each other. The parties and the witness gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witness on their evidence. All testimony and evidence 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 keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

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

This fixed-term tenancy began on December 7, 2009 and expired on November 30, 2010 after which time the tenancy continued on a month-to-month basis. The tenancy ultimately ended on March 31, 2011. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. On

November 30, 2009 the landlord collected a security deposit from the tenant in the amount of \$750.00. The rental unit is a basement suite within a house and the landlord resides in the upper level of the house.

The landlord testified that utilities were not included in the rent, and the landlord's mother lived with the landlord for a time, so the landlord pro-rated the amount of the utilities payable by the tenant accordingly. A copy of the tenancy agreement and a copy of utility bills were provided in advance of the hearing. The landlord stated that when the bills arrived, they would be prorated by dividing the amount of the bill by 7, being the number of people residing in the house, and then multiplying that amount by 3, being the number of persons occupying the basement suite. That was the amount to be paid by the tenant. The landlord claims \$1,638.91 for the tenant's share of unpaid utilities.

The landlord further testified that an area under the deck was for storage, however the tenant used it to store garbage. The garbage smelled bad, and after the tenant left the rental unit, the landlord placed all the garbage in one place and then hired people to remove it. The landlord provided a receipt in the amount of \$319.20 for that service. The landlord stated that the tenant was asked to clean it but the tenant only returned to pick up his bike about a week after the end of the tenancy.

The landlord also testified that the tenant lost the keys to the rental unit and the landlord provided a receipt in the amount of \$17.91 for purchasing a new lock and an invoice for \$113.12 for the installation. The landlord stated that purchasing the lock was cheaper than having the locksmith or installer provide one.

The tenant testified that utilities hadn't been paid for awhile and rent was late a few times and the landlord got hostile about it. The hostility was heard by the tenant's children. Further, the tenant believed that cable and internet were included in the rent; the tenant did not look at all boxes on the tenancy agreement and doesn't see well. The tenant also testified that the landlord gave several utility bills all at once to the tenant and expected a lump sum that the tenant didn't have.

The tenant also testified that garbage was taken to work weekly, not left under the deck. The tenant also stated that the landlord emailed the tenant stating that the garbage and belongings under the deck had to be cleaned out by the tenant by April 6, 2011, but the landlord did not provide the tenant with that opportunity and hired someone to clean it out prior to that date. A copy of the email was also provided as evidence.

The tenant stated that a pair of expensive skates and some other belongings were removed by the landlord.

The tenant did not agree with paying for water and an attempt to discuss it with the landlord was not successful.

The tenant also testified that the heat was controlled by the landlord in the upper unit of the house and the tenant was not advised of that prior to the commencement of the tenancy.

The landlord's witness testified that the witness removed the items from under the deck but did not see a box or any valuables. The witness moved into the unit hours after the tenant moved out, and the tenant was still cleaning on March 31, 2011 when the witness was to move in. Therefore, there was no time to complete a move-in condition inspection or a move-out condition inspection.

Analysis

With respect to the unpaid utilities, the tenancy agreement is clear that no utilities were included in the rent. The tenant signed that agreement, and therefore maintains that obligation. I have examined the bills provided by the landlord and find that the tenant is in arrears of utilities in the amount of \$1,052.18, not \$1,638.91 as claimed.

With respect to the landlord's claim for cleaning, the *Act* requires that a tenant must move from a rental unit by 1:00 p.m. on the last day of the tenancy unless the parties otherwise agree. The *Act* also states that a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, and must return the keys to the rental unit to the landlord. Further, the *Act* places the onus on the landlord to conduct a move-in and a move-out condition inspection report, and must provide the tenant at least 2 opportunities to complete the move-out condition inspection. The regulations go into great detail about how that must take place. In the event that items require attention by the tenant, the move-out condition inspection is the means to provide the tenant with an opportunity to make those corrections in order to protect the security deposit held in trust by the landlord. In this case, the landlord agreed that the tenant had to remove the garbage and belongings from under the deck by April 6, 2011 and then hired someone to do it prior to that date and did not abide by the landlord's own instructions. The landlord has not made a claim for the tenant's over-holding of the rental unit beyond 1:00 p.m. Therefore, I find that the tenant cannot be required to pay the cleaning expense and the landlord's claim for cleaning must be dismissed.

It is clear that the tenant did not return the keys to the rental unit and the landlord has an obligation to future tenants to ensure security, and therefore the landlord is entitled to the \$131.03 expense for that service.

With respect to the landlord's application to keep all or part of the security deposit, I find it prudent to point out that since the landlord did not cause a move-in or move-out condition inspection report to be completed, the landlord's right to claim against the security deposit for damages is extinguished. The onus is on the landlord to ensure that both reports are completed and copies provided to the tenant. However, having found that the tenant is in arrears for utilities, I find that the landlord is entitled to keep the security deposit to off-set the amount owed.

In summary, I find that the landlord's application for unpaid utilities is hereby awarded at \$1,052.18; the landlord's application for changing the locks is hereby awarded at \$131.03; the landlord's application for cleaning is hereby dismissed; and the landlord is entitled to keep the security deposit in partial satisfaction of the unpaid utilities. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I order that the landlord keep the security deposit in the amount of \$750.00 and I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$483.21. This order may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement 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: September 22, 2011.

Residential Tenancy Branch