



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed June 14, 2011: MND; MNR; MNDC; MNSD; FF

Tenant's application filed July 13, 2011: MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek a Monetary Order for loss of income and damage to the rental unit; compensation for damage or loss under the Residential Tenancy Act (the "Act"); to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks compensation for damage or loss under the Act; for return of the security deposit; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

The Landlords' agent testified that he served the Tenant with the Notice of Hearing documents by handing the documents to the Tenant at his new residence on June 15, 2011. He testified that he served the Tenant with copies of the Landlords' documentary evidence by handing the documents to the Tenant at his new residence on August 31, 2011.

The Tenant testified that he served the Landlords with the Notice of Hearing documents and copies of his documentary evidence by registered mail on July 14, 2011.

Based on the undisputed affirmed testimony of the parties, I am satisfied the Notices of Hearing and each party's documentary evidence were served in accordance with the provisions of the Act.

Issues to be Decided

1. Are the Landlords entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
2. Is the Tenant entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
3. Disposition of the security deposit.

Background and Evidence

The rental unit is a suite in a quadruplex. Copies of three tenancy agreements were provided in evidence.

The first tenancy agreement was a one month fixed term tenancy. The Tenant moved into one of the suites on May 1, 2010, until the rental unit was ready for occupancy. The Tenant paid rent in the amount of \$2,000.00, and provided a security deposit in the amount of \$1,000.00.

The second tenancy agreement was a 6 month fixed term tenancy. On June 1, 2010, the Tenant moved into the rental unit. Monthly rent was \$1,400.00, due on the first day of each month and did not include utilities. The Landlord returned \$300.00 of the security deposit to the Tenant, leaving a balance of \$700.00 being held as a security deposit for the rental unit.

At the end of the six month term, the Tenant signed another 6 month fixed term tenancy agreement. Monthly rent remained at \$1,400.00 due on the first day of each month and did not include utilities. The tenancy ended on May 31, 2011.

There was no Condition Inspection Report prepared that complies with the provisions of the Act and Regulation at the beginning or the end of the tenancy.

The Landlords' agent provided the following testimony:

The Landlords' agent testified that the Tenant did not clean the rental unit or shampoo the carpets at the end of the tenancy. He stated that there was a large build-up of grease in the kitchen on the stove, cupboards, walls, and stone floor. The Landlords provided photographs of the rental in evidence.

The Landlords' agent testified that it took 15 hours, not including the Landlords' time, to get the rental unit ready for a new tenant to move in. The Landlords provided a copy of the cleaner's invoice in the amount of **\$225.00**. The Landlords' agent testified that the Landlord also paid **\$55.20** for cleaning supplies. The Landlord provided a copy of the receipt dated June 1, 2011, for the cleaning supplies. The Landlords' agent testified that it cost **\$112.00** to steam clean the carpets. The Landlords provided a copy of the invoice for the carpet cleaning.

The Landlords' agent stated that the rental unit was re-rented for June 17, 2011. The Landlords seek loss of revenue from June 1 – June 16, 2011 in the amount of **\$607.00**.

The Landlords' agent testified that the Tenant was responsible for paying 1/3 of the gas and electricity bills. He testified that there was one boiler for the four suites and that the gas bills were split between occupied suites. The Landlords' agent testified that one of the suites in the rental property was not occupied. He stated that the Tenant did not pay his share of utilities for the last month of the tenancy. The Landlords seek **\$49.63** for the Tenant's share of the electric bill and **\$73.20** for his share of the gas bill. The Landlords provided copies of the utility bills in evidence.

The Tenant provided the following testimony:

The Tenant testified that he should not have had to pay 1/3rd of the gas bill because there were 4 units in the rental property. He stated that the vacant suite was heated. The Tenant did not dispute that he owed 1/3rd of the electricity bills. He submitted that he had overpaid **\$255.03** in gas bills over the term of the tenancy and provided copies of the gas bills in evidence. The Tenant seeks to recover the overpayment from the Landlord. The Tenant does not dispute that he owes the Landlord \$49.63 for an unpaid electric bill, but stated that he only owes \$54.90 for gas (1/4 of the total bill), not the \$73.20 (1/3 of the total bill) the Landlord is seeking.

The Tenant testified that the washer and dryer did not work for a week and that he had to use a taxi to and from a Laundromat twice during that period. He stated that it cost him \$3.00 per load of laundry. The Tenant seeks compensation in the amount of **\$40.00** for loss of use of the laundry facilities at the rental unit for 7 days.

The Tenant testified that he did not shampoo the carpets, but stated that he did vacuum and spent three days cleaning the rental unit at the end of the tenancy. The Tenant questioned when the photographs provided by the Landlords were taken.

The Tenant testified that he was without the use of his bathroom for 7 days during the tenancy while the Landlords demolished a wall. The Tenant testified that the Landlords offered use of the vacant suite's bathroom, but limited the hours he could use it. The Tenant testified he used a friend's shower during the renovation. The Tenant seeks compensation in the amount of **\$500.00** for loss of use of his bathroom for one week.

The Landlords' agent gave the following reply:

The Landlord's agent testified that the Tenant's laundry facilities were not operating for 3 days, not the week that the Tenant alleges, because the Landlords were waiting for parts.

The Landlords' agent testified that bathroom tile fell off the wall in the Tenant's suite and that the contractor said he could glue it back on. He stated that the Tenant requested a new wall, so the Landlords complied with the Tenant's wishes. The Landlords' agent testified that the shower and toilet are located in separate rooms in the rental unit. He stated that the Landlords offered use of the shower in the vacant unit with no time restrictions. In the alternate the Landlords gave him the option of moving into the vacant suite (which is furnished) while the repairs were being done. The Landlords' agent stated that the Tenant declined to do either.

The Landlords' agent testified that the photographs were taken on June 1, 2011, and that the kitchen was brand new when the Tenant moved in with the exception of the stove. The Landlords' agent referred to a photograph of the stone floor and stated that the clean area in the picture was where the kitchen island normally stood. He stated that the Landlords moved the kitchen island to show the amount of dirt and grease that remained on the floor at the end of the tenancy.

Analysis

Regarding the Landlords' application

This was a fixed term tenancy that ended on May 31, 2011. The Landlords seek loss of revenue for the period of June 1 to 16, 2011. The Landlords did not provide sufficient evidence that the rental unit was not available for the new Tenants until June 17, 2011. This portion of their application is dismissed.

The Tenant agreed that he had not shampooed the carpets at the end of the tenancy. The Tenant lived in the rental unit for a year. The Residential Tenancy Branch Policy Guidelines provide that carpets must be shampooed at the end of a tenancy of this length. The Landlord provided sufficient evidence of the cost of shampooing the carpets and I allow this portion of the Landlords' claim in the amount of **\$112.00**.

The Tenant did not dispute that he had agreed to split the cost of utilities with the number of occupied suites in the rental property at the beginning of the tenancy. Therefore, I find that the parties had an agreement that the Tenant would pay utilities in this fashion and that it was a term of the tenancy agreement. The Landlord provided sufficient evidence of the amount owed by the Tenant with respect to the utilities and the Tenant agreed that the utilities were not paid. I allow this portion of the Landlords' application in the amount of **\$122.83** (\$49.63 + \$73.20).

Based on the evidence provided by both parties, and on the balance of probabilities, I find that the Tenant did not leave the rental unit in a reasonably clean state at the end of the tenancy. The Landlord provided a receipt for the cleaning, which states:

Cleaning kitchen 7 hours:

- Removed grease from walls, fridge, stove, and kitchen counter tops & cabinet doors.
- Extremely filthy, oil residue and smoke damage all over the kitchen

Cleaning bathroom 3 hours:

- Very soiled soap scum, water damage, and mildew all over shower doors

General house cleaning 5 hours:

- Oil on walls, dirty doors, etc.

Cleaning supplies supplied.

The invoice is for 15 hours work at \$15.00 per hour, which I find to be a reasonable amount. This portion of the Landlords' claim is granted in the amount of **\$225.00**.

The invoice provided in support of the Landlords' claim for cleaning supplies includes: cleanser; comet; easy off oven cleaner; glass cleaner; Lysol; bleach; sponge towel; sponge; latex gloves; and a stainless steel scrubber. I grant this portion of the Landlords' claim in the amount of **\$55.20**.

The Landlord has established a monetary award, calculated as follows:

Cost of shampooing carpets	\$112.00
Unpaid utilities	\$122.83
Cleaner's invoice	\$225.00
Cleaning supplies	<u>\$55.20</u>
TOTAL	\$515.03

Regarding the Tenant's application

The Tenant did not dispute that he had agreed to split the cost of utilities with the number of occupied suites in the rental property at the beginning of the tenancy. Therefore, I find that the parties had an agreement that the Tenant would pay utilities in this fashion and that it was a term of the tenancy agreement. This portion of the Tenant's application is dismissed.

It is not disputed that the Tenant was without use of the in-suite laundry facilities for a short period of time. This is the Tenant's application and therefore the Tenant has the

responsibility of proving the number of days that he was without laundry facilities. I find that the Tenant provided insufficient evidence that he was without laundry facilities for 7 days. The Landlords' agent agreed that he was without use of the in-suite laundry for 3 days, and therefore I find that the Tenant did not have use of the laundry facility for 3 days. I do not find negligence on behalf of the Landlord. However, if a tenant is deprived of the use of all or part of the rental unit through no fault of his own, the tenant may be entitled to damages even where there has been no negligence on the part of the landlord. I find that the value of the in-suite laundry was \$100.00 per month, and therefore the Tenant has established a monetary award in the amount of **\$10.00** for this portion of his claim.

The Tenant was without use of his shower for a period of 7 days and seeks \$500.00 in compensation (\$71.43 per day). I find this to be excessive. The Tenant did not dispute that the Landlord offered alternate showering facilities within the rental property, or that the Tenant could move into the furnished suite while the wall was being repaired. This portion of the Tenant's application is dismissed.

Regarding disposition of the security deposit and recovery of filing fees

I order that both parties bear the cost of their filing fees.

I hereby set off the Tenant's monetary award against the Landlords' monetary award. Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may deduct the balance from the security deposit. I order the Landlords to return the balance of the security deposit in the amount of **\$194.97** to the Tenant forthwith. This sum is calculated as follows:

Security deposit held by Landlord	\$700.00
Less set-off of monetary award	-\$515.03
Less set-off of Tenant's award	<u>-\$10.00</u>
Balance to Tenant	\$194.97

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$194.97** for service upon the Landlords, representing return of the balance of the security deposit after set off of the Landlords' monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: September 30, 2011.

Residential Tenancy Branch