Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and/or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlord, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation and or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach and pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

At the outset of the hearing the male Tenant confirmed receipt of the hearing documents and copies of the Landlord's evidence. He stated that he was attending the teleconference hearing to represent himself as a co-tenant and to speak as agent for the female Tenant.

I heard undisputed testimony the parties entered into a fixed term tenancy agreement that began on January 15, 2011 and was set to switch to a month to month tenancy after December 31, 2011. Rent is payable on the first of each month in the amount of $1,095.00. On January 12, 2011 the Tenants paid $547.50 as the security deposit and on January 21, 2011 the Tenants paid $547.50 as the pet deposit. A move in inspection report was conducted on January 13, 2011 in the presence of both Tenants and the move out was conducted June 30, 2011 in the absence of the Tenants.

The Landlord affirmed the tenancy ended June 30, 2011 after being awarded an Order of Possession for cause. The Landlord advised that when they attended the rental unit at 1:00 p.m. on June 30, 2011 for the scheduled move out inspection the Tenants had left a chair jammed up against the inside of the door making it difficult for them to enter the unit. When they did get inside they found the Tenants had turned the heat up to the highest level, left a large amount of debris inside the unit, did not repaint the bedroom to the original color as required, left dog pee and feces on the carpet, left holes in the walls, and did not clean the rental unit before leaving, as supported by the photographs she provided in evidence which were taken on June 30, 2011.

The Landlord is seeking $2,765.34 to return the unit to the same condition as it was at the onset of the tenancy, as supported by the photographic evidence and invoices provided in her evidence. The work to clean, repair, and repaint the bedroom began as soon as possible at the beginning of July 2011 and was completed and invoiced on July 12, 2011.

The Landlord is seeking loss of rent of $1,095.00 for July 2011 because of the condition the Tenants left the unit in the Landlord was not able to advertise the unit for rent until the repairs and cleaning were completed mid July 2011. She advised the unit has still not been re-rented.

The Landlord advised they are also seeking $266.00 ($193.02 + $72.98) for natural gas charges. She pointed out that as per their tenancy agreement the Tenants were required to pay 100% of the natural gas invoice upon receipt of the invoice. She referred to her evidence which included copies of two natural gas invoices that go up to June 30, 2011 and a copy of cheque issued by the Tenants for the amount of $193.02 that had a stop payment placed on it by the Tenants. The Landlord stated the second bill was high because the Tenants had intentionally cranked the heat up before leaving the unit.

The male Tenant affirmed that no one else was in the room with him. Then as he was providing his testimony he asked someone a question and clarified that it was the female Tenant in the room with him. The Tenant stated that they had paid all of their bills before moving. Then he stated that they went back to the rental unit the day after they moved out to clean and pick up the rest of their possessions only to find the Landlord changed the locks so they could not get back in. After further clarification he stated they returned June 30, 2011 at 5:00 p.m. and that they had the female Tenant's parents with them. The Tenant stated that he attempted to call the Landlord once, after finding the unit locked, but that she never returns his calls. When asked about the

possessions he left inside the unit the Tenant stated that he owns his own company and is too busy to worry about getting his possessions out of the unit. He confirmed he did not provide evidence to support his testimony and argued that he did not know to provide such evidence because he is not a lawyer.

The Landlord confirmed she changed the locks on June 30, 2011 sometime between 2:00 and 3:00 p.m. because the tenancy ended June 30, 2011 at 1:00 p.m. and the Tenants had already vacated the property and did not attend the move out inspection that was scheduled for 1:00 p.m. that day. The Landlord stated that in response to the Tenant's statement that he is not a lawyer, she said he knows exactly what he is doing as supported by the text messages he sent her that were provided in evidence. She confirmed she never received any phone calls or text messages from either Tenant after receiving the four text messages that were sent to her the morning of June 30, 2011. As for the possessions that were left in the unit, it was mostly garbage and debris. She also confirmed neither Tenant provided her with a forwarding address so she served the female Tenant in person at her place of employment as listed on the application.

When asked what address was to be used for service the male Tenant requested that we continue to use the female Tenant's place of employment. The female Tenant came into the teleconference hearing and affirmed that she was still employed at that address and that she wished to have this address as their service address.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 (2) of the Act provides that when a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The evidence supports the Tenants were granted permission to paint the rental unit and if they went ahead with the colors they had selected they would be required to repaint the unit at the end of the tenancy to return it back to its original color. The photographic evidence supports the bedroom was painted and not returned to its original color as required.

I favor the evidence of the Landlord, who provided documentary evidence to support their testimony and each item claimed, over the evidence of the Tenants who stated that they returned to the rental unit, after the tenancy had ended and attempted entry into the rental unit to clean it and pick up their remaining possessions. I favored the evidence of the Landlord over the Tenants, in part, because the Landlord's evidence was forthright and credible. The Landlord readily acknowledged that she had the locks changed on June 30, 2011 between 2:00 and 3:00 p.m. In my view the Landlord's willingness to acknowledge her actions lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's explanation that he made one call to the Landlord and did not make further efforts to gain access to his possessions improbable. If the Tenants had truly attended the rental unit in attempts to regain their possessions and clean the unit it is reasonable to conclude they would take action to enforce their legal entitlement to their possessions. I find that the Tenant's explanation that he simply was too busy to make efforts to contact the Landlord to be improbable. Rather, I find the Landlord's explanation that the Tenants knew exactly what they were doing and made no effort to contact her once they vacated the property to be probable.

For all the aforementioned reasons, I find the Landlord has met the burden of proof that she suffered a loss due to the Tenants' breaches of their written requirement to repaint the rental unit, to the tenancy agreement which stipulates the Tenants pay 100% of natural gas, and breaches to sections 32 and 37 of the Act. Accordingly, I award the Landlord the $2,765.34 for cleaning and repairs to the unit, plus $547.50 for loss of rent for the period it took to repair and clean the unit July 1 to July 12, 2011, plus $266.00 for natural gas, pursuant to section 67 of the *Residential Tenancy Act*.

The Landlord has been successful with her application; therefore I award recovery of the **$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Repairs and cleaning to the unit	$2,765.34
Loss of Rent July 2011	547.50
Natural Gas Utility	266.00
Filing Fee	50.00
SUBTOTAL	$3,628.84
LESS: Security Deposit $547.50 + Pet Deposit of $547.50 + Interest 0.00	-1,095.00
Offset amount due to the Landlord	**$2,533.84**

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **$2,533.84.** This Order is legally binding and must be served upon the respondent Tenant.

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: October 31, 2011.