

DECISION

Dispute Codes:

Landlord's application: MNR; MND; MNSD; MNDC; FF

Tenants' application: MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for unpaid rent, damages to the rental property and compensation for damage or loss; to retain the security deposit in partial satisfaction of the Landlord's monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek compensation for damage or loss; return the security deposit and pet damage deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that each party served the other with their Notice of Hearing documents and that the Landlord provided the Tenants with its documentary evidence in accordance with the service provisions of the Act and the Rules of Procedure. The Tenant did not provide the Landlord with copies of her documentary evidence and therefore it was not considered.

Issues to be Decided

- Is the Landlord entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
- Are the Tenants entitled to a monetary award for loss of peaceful enjoyment of the rental unit, compensation for ruined furniture and return of the security and pet damage deposits?

Background and Evidence

The parties agreed on the following facts:

The Tenancy commenced on May 1, 2009. A copy of the tenancy agreement was provided in evidence. Initially, the agreement was a one year lease. At the end of the one year term, the tenancy continued on a month-to-month basis.

At the beginning of the tenancy rent was \$2,400.00, due on the first day of each month. Rent increased to \$2,475.00 effective November 1, 2010. The Tenants paid a security deposit in the amount of \$1,200.00 and a pet damage deposit in the amount of \$1,200.00 at the beginning of the tenancy.

The parties performed a move-in condition inspection together at the beginning of the tenancy. A copy of the Condition Inspection Report was provided in evidence.

The Landlord's agent and her witness provided the following testimony:

The Landlord's agent testified that the Landlord notified the Tenants on June 2, 2011, that the rental unit was for sale. She stated that the female Tenant told her that the Tenants intended on moving anyway. The Landlord's agent testified that the Tenants did not provide any verbal or written notice with respect to an end of tenancy date, despite repeated e-mail reminders from the Landlord to provide notice in writing.

The Landlord's agent testified that the Tenant left a voice mail complaining that the deck was "blocked" on June 3, 2011. She stated that she called the Tenant back and left a message on June 4, 2011, asking for particulars about the blockage. The Landlord's agent testified that the female Tenant returned her call and told her that the Tenants would be moving out of the rental unit at the end of June. The female Tenant also insisted that the male Tenant had dropped off written notice to end the tenancy at the Landlord's office on May 31, 2011.

The Landlord's agent testified that the Landlord inspected the deck in May, 2011, after the Tenant first called about it, and discovered that a piece of flashing was missing. The Landlord testified that the flashing was replaced. The Landlord provided a copy of the invoice for the repairs in evidence. The Landlord's agent testified that the Landlord dealt with the problem when he was notified by the Tenant in May, 2011.

The Landlord's agent stated that she wrote a letter to the Tenants confirming that the Tenant had left a message about the deck and reminding the Tenants that they had not provided written notice of termination of the tenancy. The Landlord a copy of a letter dated June 7, 2011, in evidence. The Landlord seeks loss of revenue for the month of July, 2011, in the amount of **\$2,475.00**.

The Landlord's agent testified that she attempted to set a time for the move-out inspection, but the Tenants moved before she could arrange it and then the male Tenant was not available. She stated that she was waiting for the Tenants to clean the carpets before the inspection took place. The Landlord's agent testified that she spoke

to the male Tenant on July 1, 2011, to find out if they had finished moving and when they could perform the move-out inspection and that the male Tenant told her they needed one more day to finish with the move.

The Landlord's agent testified that the carpets were professionally cleaned at the Tenant's request at the beginning of the tenancy because the linoleum installers had dirtied the carpets. The Landlord provided a copy of a bill for professional carpet cleaning dated October 7, 2009, in support of this claim. The Landlord's agent testified that the Tenants did not clean the carpets at the end of the tenancy, so the Landlord hired a professional to do it. The Landlord provided a copy of a bill for professional carpet cleaning at the end of the tenancy in the amount of **\$410.48**.

The Landlord's agent testified that the Tenants did not leave the rental unit in a reasonable state of cleanliness and provided a copy of an invoice for cleaning the rental unit in the amount of **\$423.36**. She stated that trash removal services were required to remove trash left by the Tenants, and provided a copy of a receipt in the amount of **\$392.00** in evidence.

The Landlord's agent testified that she went to the rental unit on July 4th and discovered that the Tenants had changed the locks to the rental unit. The Landlord's agent testified that she called a locksmith, who rekeyed 6 locks and cut two new keys. The Landlord provided a copy of the locksmith's invoice in the amount of **\$190.36**.

The Landlord's agent testified that the Tenants were responsible for an outstanding plumber's bill from February, 2010, in the amount of **\$126.00**. A copy of the invoice was provided in evidence.

The Landlord's agent testified that the Tenants still owed **\$75.00** in rent for the month of December, 2010, and an NSF fee in the amount of **\$25.00** for August, 2010 rent. The Landlord provided a copy of the Tenants' ledger in evidence.

The Landlord's agent stated that the linoleum was new when the Tenants moved in, and provided a copy of the invoice in evidence. The Landlord's agent testified that the Tenants damaged the kitchen linoleum by moving their own fridge into, or out of, the kitchen. The Landlord provided photographs of the damaged linoleum in evidence, along with an estimate for patching the linoleum in the amount of **\$150.00**.

The Landlord's agent testified that the Tenants were responsible for gardening under the tenancy agreement and that they neglected the garden. The Landlord seeks to recover the cost of hiring a gardener in the amount of **\$250.00** and provided a copy of the gardener's bill in evidence.

The Landlord's witness gave the following testimony:

The Landlord's witness is also an agent of the Landlord's.

She testified that she was occasionally present at the rental unit and that the rental unit was not kept particularly clean. The witness testified that she did not recall seeing morning glory invading the yard, and that the front lawn looked to be in good condition. The witness testified that the Tenants' dog was always in the back yard, so she did not take note of its condition.

The Landlord's witness denied that the male Tenant provided her with written notice to end the tenancy on May 31, 2011, or at any time after that date.

The Landlord's witness testified that she sent a professional company to clean the carpets and the carpeted stairs on October 7, 2009, at the request of the Tenants.

The Tenant provided the following testimony:

The Tenant testified that on May 31, 2011, her husband gave the Landlord's witness written notification that they were ending the tenancy effective July 1, 2011. The Tenant testified that she used her own cleaner to shampoo the carpet, scrubbed the bathroom and spent 5 hours cleaning at the end of the tenancy and that the rental unit was in better shape than when the Tenants moved in. The Tenant agreed that she did not clean the stove at the end of the tenancy.

The Tenant denied changing the locks to the rental unit. She stated that she left the keys on the kitchen counter and that she had no reason to change the locks.

The Tenant testified that they always kept up with the gardening and that the photograph provided was taken at the side of the house. She stated that the front and the back were done and that the Landlord provided gardening services twice a year to take care of pruning. She testified that the house sold one month after they moved out and that the Landlord hired the gardener to give the house curb appeal.

The Tenant agreed that they had damaged the linoleum while moving their fridge and that the estimate for repairs was a fair one.

The Tenant agreed that they were responsible for the outstanding plumber's bill, caused by a tooth brush being flushed down a toilet.

The Tenant stated that she did not remember owing \$75.00 in rent for December, 2010, or the NSF fee for August rent, but that she agreed to pay it based on the tenant ledger provided in evidence.

The Tenant testified that some of the trash the Landlord's agent referred to was not trash. For example, she stated that there was a child's play kitchen, in good condition, and that someone was going to pick it up after July 2, 2011. The Tenant testified that the crates pictured in the Landlord's photograph were there when the tenancy began.

The Tenant testified that the deck had been rotting for a long time and that the Landlord always promised to repair it, but did not. She stated that every time it rained, water would leak into the garage from the faulty deck and onto furniture that was stored there. The Tenant testified that this caused water damage and mould in the furniture which destroyed it. The Tenants seek compensation in the amount of **\$1,000.00** for ruined furniture.

The Tenant testified that the rental unit was in poor shape throughout the tenancy and that the Landlord did not take her concerns seriously. She stated that the wiring was a mess and that the deck was rotting and was soft in one spot. The Tenant stated that she made several calls to the Landlord over the tenancy with respect to mold and that she worried about their children or animals falling through the deck. The Tenant testified that she wrote "one letter to the Landlord awhile back" but did not provide a copy in evidence. The Tenants seek compensation for loss of peaceful enjoyment in the equivalent of one month's rent, **\$2,475.00**.

The Tenants also seek return of the security and pet damage deposits in the amount of **\$2,400.00**.

Analysis

Both parties have applied for damages and the onus is on each applicant to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the other party pay for the loss requires the applicant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that, wherever possible, the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the Landlord's application

During the course of the Hearing, the female Tenant agreed to pay for the plumber's bill; for damage to the linoleum; rent shortfall for December, 2010; and the NSF fee for August, 2010, rent. Therefore, I award the Landlord the sum of **\$376.00** for these items.

The parties disagreed with respect to whether or not the Tenants had given the Landlord written notice to end the tenancy. The Landlord's witness denied being given the Tenants' written notice on May 31, 2011. Copies of e-mails provided in evidence, along with the Landlord's letters dated June 7 and 13, 2011, make it clear that the Landlord has not received written notice. The Tenants did not provide sufficient evidence that they provided their written notice to end the tenancy, in accordance with the provisions of Section 45 of the Act. In any event, a notice to end tenancy given on May 31, 2011, would have ended the tenancy on June 30, 2011. The Tenants did not move out of the rental unit until after July 1, 2011. Therefore I find that the Landlord is entitled to loss of revenue for the month of July, 2011, in the amount of **\$2,475.00**.

The Landlord did not provide sufficient evidence that the Tenants had changed the locks at the rental unit. I note that the Landlord may have wished to change the locks for the new owner in any event. This portion of the Landlord's application is dismissed.

At the end of a tenancy, Section 35 of the Act requires that the parties perform a move out condition inspection. The onus is on the landlord to arrange for the inspection to take place. The landlord must offer the tenant at least two opportunities to schedule the condition inspection. Pursuant to the provisions of Section 17 of the Regulations, the landlord must provide the tenant with a Notice of Final Inspection Opportunity if the parties cannot mutually agree on a date for the inspection. In this case, the Landlord did not provide the Tenants with a Notice of Final Inspection Opportunity.

Generally, at the end of the tenancy, a tenant is required to steam clean or shampoo the carpets after a tenancy of one year. The female Tenant testified that she used her own machine to clean the carpets at the end of the tenancy. There is no clause in the tenancy agreement that the Tenant is required to have the carpets professionally cleaned at the end of the tenancy. Therefore, the Landlord's application to recover the cost of professional carpet cleaning is dismissed.

The female Tenant stated that she did not clean the oven, but that the remainder of the rental unit was in reasonably clean condition. I note that the Landlord was selling the rental unit and therefore may have wished to clean it to a higher standard, however the standard that is required by the Act is "reasonably clean". I find that the Landlord did not comply with Section 35(2) of the Act, and did not provide sufficient evidence that the

rental unit required additional cleaning (other than the oven, by the Tenant's own admission). I award the Landlord a nominal amount of **\$20.00** for cleaning the oven. The remainder of Landlord's application for the cost of cleaning the rental unit is dismissed.

The female Tenant stated that she left the child's kitchen on the property for someone to pick up after the tenancy ended. The Tenants did not remove or give away the child's kitchen prior to the end of the tenancy and therefore, I find the Landlord is entitled to the cost of trash removal in the amount of **\$392.00**.

There is a provision in the tenancy agreement that the Tenants are responsible to "cut and water the lawn and to keep the lawn, flower beds and shrubbery in good order and condition". Generally, a tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires the tenant to maintain the flower beds. Pruning and major projects are the responsibility of the Landlord. The Landlord's witness testified that the front yard was in good condition. She stated that she did not recall seeing an invasive amount of morning glory on the property. I find that the Landlord has not provided sufficient evidence to support his claim for recovery of the cost of the gardener's bill and this portion of his application is dismissed.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenants.

Pursuant to the provisions of Section 72 of the Act, the Landlord may apply the security and pet damage deposits in partial satisfaction of his monetary award.

The Landlord has established a Monetary Order, calculated as follows:

Loss of income for July, 2011	\$2,475.00
Plumber's bill, unpaid rent, NSF fee, damage to lino	\$376.00
Cleaning the oven	\$20.00
Junk removal	\$392.00
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$3,313.00
Less security deposit and pet damage deposit	<u>-\$2,400.00</u>
TOTAL AFTER SET-OFF	\$913.00

Regarding the Tenants' application

The Landlord's agent testified that the Tenants' concerns were dealt with as they arose. The female Tenant testified that it took months for the Landlord to address the problem

with the deck and that some issues were never dealt with at all. I find that the Tenants did not provide sufficient evidence to support their claim for loss of peaceful enjoyment, for example a copy of the Tenants' complaints in writing to the Landlord about the deck or the electrical problems. Therefore, this portion of their application is dismissed.

The Tenants did not provide sufficient evidence to support their claim for damaged furniture, for example evidence of the worth of the furniture that was damaged. Neither did the Tenants show how they mitigated their loss. For example, the Tenants were aware that a leak in the roof of the garage was damaging their furniture but did not cover it with tarps, or move it to another area of the garage. This portion of their claim is also dismissed.

The security deposit and pet damage deposit have been extinguished pursuant to the provisions of Section 72 of the Act.

The Tenants have not been successful in their application and are not entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Tenants' application is dismissed in its entirety.

I hereby provide the Landlord a Monetary Order in the amount of **\$913.00** for service upon the Tenants. This Order may be filed in British Columbia Provincial Court (Small Claims) 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: October 31, 2011.

Residential Tenancy Branch