

DECISION

Dispute Codes:

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

Tenant's application: MNDC; MNSD

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for unpaid rent and loss of revenue; to retain the security deposit in partial satisfaction of his 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, regulation or tenancy agreement; and for return of the security deposit.

The Landlord agent and the Tenant gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary award for unpaid rent and loss of revenue?
- Is the Tenant entitled to compensation for moving costs, cable hook-up, medication and return of the security deposit?

Background and Evidence

The rental unit is the basement suite of a house. On July 21, 2011, the parties signed a one year lease, a copy of which was provided in evidence. The term of the lease was from September 1, 2011 to August 31, 2012. Monthly rent was \$875.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$440.00 on July 21, 2011.

The Landlord testified that on September 15, 2011, the Tenant advised him she was moving out of the rental unit immediately and returned the keys on the same day. He stated it was insufficient notice for him to re-rent for October, 2011. The Landlord testified that there was water coming into the rental unit after a major rain storm. He stated that there were problems in the past with water leaking into the basement, but it was fixed by excavating, fixing a missing footing in the foundation and replacing the draining tile.

The Landlord stated that he was concerned when he heard that there was another leak, but it turned out to be a small amount of water and that he thought a sump pump would fix the problem. The Landlord stated that he later discovered that the previous tenant

had left the bedroom window open with the sprinkler on, which sprayed through the open window and on to the carpet.

The Tenant testified that the Landlord was out of town when she picked up the keys to the rental unit from the previous tenant on August 31, 2011. The Tenant testified that at the time she picked up the keys, she noticed a fan was on in a room that was to be her 2 year old son's room and assumed it was wet because the carpets were freshly steam cleaned.

The Tenant testified that she moved into the rental unit on September 2, 2011 and noticed a musty smell. She stated that the carpet was still wet and that her Dad also noticed the musty smell. The Tenant stated that she decided not to move her son into his bedroom until she got in touch with the Landlord. The Tenant stated that she tried to contact the Landlord, but was unsuccessful. The Tenant testified that for the next three days she slept on the couch with her son.

The Tenant testified that she noticed her son's carpet was still not dry on September 5, 2011, and that the musty odor was irritating her asthma. The Tenant stated that she and her son moved back into her father's house on September 5, 2011. She stated that she tried to call the Landlord twice on September 5, 2011, and texted him three times, but she did not hear back from him until September 7, 2011.

The Tenant stated that the person who lived in the rental unit prior to her moving in ("Ian") was still living on the rental property in another suite. She spoke to Ian and told him about the wet carpet. She testified that Ian told her that there was a history of leaks in the rental unit and that he was surprised that the Landlord had not told her. She testified that she and Ian pulled up a piece of the carpet and were shocked at how much black mould was under the carpet.

The Landlord testified that he was out of town when the Tenant moved into the rental unit and arranged for Ian to give her the key. He stated that he was going to do a move-in inspection with the Tenant when he got back. He stated that he was "on the water" when the Tenant called on September 5, 2011, and could not respond right away to her calls, but came home early to address the problem. He stated that he jack-hammered the floor after pulling up the carpet and underlay and noticed that the soil was dry. He stated the next morning the carpet was damp, but the soil was still dry so he sealed the concrete, repaired the hole in the drywall and replaced the underlay. The Landlord stated that the Tenant agreed that the problem was fixable, and that he agreed that the Tenant would not start paying rent until September 15th, which is when he expected the problem would be fixed.

The Landlord testified that he re-rented the rental unit for November 1, 2011. The Landlord seeks unpaid rent from September 15 to September 30, 2011, in the amount of \$437.50; and loss of revenue for the month of October, 2011, in the amount of \$875.00.

The Tenant stated that she did agree, at first, to the Landlord fixing the problem by drying out the carpet, putting down antifungal spray and steam cleaning the carpet. She stated that she changed her mind after talking with Ian about the ongoing water problems with the suite and researching black mould. The Tenant testified that on September 12, 2011, she told the Landlord she was not going to move back into the rental unit and that on September 15, 2011, she dropped off the key. The Tenant submitted that the Landlord was not honest with her about the water problems with the rental unit and that he did not take her health concerns seriously. The Tenant submitted that the Landlord did not provide full disclosure when she agreed to sign the lease.

The Tenant stated that cable was included in her rent, but when she went to pick up a cable box, the cable provider told her she could not just hook up a cable box in the rental unit because it would be stealing cable from the upstairs tenants. The Tenant testified that she had to pay for cable hookup costs and the first two months of cable charges, for a total amount of \$120.00, which she seeks to recover from the Landlord. The Tenant also seeks double her security deposit pursuant to the provisions of the Act, in the amount of \$880.00; the cost of medication for anxiety in the amount of \$30.00; and moving costs in the total amount of \$349.44.

Analysis

With respect to claims for damages, the Applicant has the burden of proof to establish his or her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent 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,
3. Proof of the amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant viewed the rental unit prior to signing the lease. She did not notice any musty odour or wet carpet when she viewed the rental unit in July, 2011, and there was no evidence that the Landlord was aware of any new moisture problems in the rental unit. I find that the Landlord provided a reasonable explanation with respect to the previous moisture problems and how they were repaired. The Tenant did not provide documentary evidence from Ian, or produce him as a witness, in order to support her claim with respect to ongoing water leaks in the rental unit. I find that the photographs provided in evidence by the Tenant do not show any substantial amount of mould. I find that there is insufficient evidence that the Landlord knew about ongoing water problems but failed to disclose it to the Tenant.

Pursuant to the provisions of Section 45(3) of the Act, the Tenant may end a fixed term tenancy before its term has expired if she provided the Landlord with written notice of her concerns with respect to mould or water problems and if the Landlord does not correct the problem within a reasonable period of time after receiving written notice. In this case, the Tenant did not provide the Landlord with written notice. In addition, I find that the Tenant did not give the Landlord a reasonable period of time to correct the problem. The Tenant testified that she told the Landlord on September 12th that she would not be moving back into the rental unit and that she returned the keys to the Landlord on September 15th. Therefore the Tenant's claim for moving costs is dismissed.

Section 38(6) of the Act provides that the Landlord must pay the Tenant double the amount of the security deposit if the Landlord does not return the security deposit or file an Application against the security deposit within 15 days of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing. In this case, I find that the Tenancy ended on September 15, 2011. The Landlord filed his Application on September 22, 2011, which is 7 days after the end of the tenancy, and therefore Section 38(6) does not apply. This portion of the Tenant's application is dismissed.

With respect to the Tenant's claim for the cost of medication, I find that there was insufficient evidence to support this claim. No medical evidence was provided (for example a doctor's note or a copy of the receipt for the prescription) and therefore this portion of the Tenant's claim is dismissed.

The tenancy agreement stipulates that cable is included in the rent. I accept the Tenant's evidence that she was required to pay hook up costs and two months cable charges and I find that the amount claimed for these charges is reasonable. Therefore, I allow this portion of the Tenant's claim in the amount of **\$120.00**.

I find that the Tenant did not end the tenancy in accordance with the provisions of the Act and that the Landlord suffered a loss as a result of her failure to do so. Therefore, I grant the Landlord's claim for unpaid rent for September in the amount of **\$437.50**; and loss of revenue for the month of October, 2011, in the amount of **\$875.00**.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security deposit towards partial satisfaction of his monetary award.

The Landlord's application had merit and I find that he is entitled to recover the cost of the filing fee from the Tenant.

I hereby provide the Landlord with a Monetary Order against the Tenant, calculated as follows:

Unpaid rent	\$437.50
Loss of revenue	\$875.00
Cost of filing fee	<u>\$50.00</u>
Subtotal	\$1,362.50
Less set-off of security deposit	-\$440.00
Less set-off of Tenant's monetary award	<u>-\$120.00</u>
TOTAL	\$802.50

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$802.50** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (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: January 3, 2012.

Residential Tenancy Branch