



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MND, MNDC, MNSD, FF, O
Tenant: MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for a monetary order for return of all or part of the pet damage deposit or security deposit.

Both parties attended the conference call hearing and provided evidence in advance of the hearing to each other and to the Residential Tenancy Branch. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

At the outset of the hearing, the landlord stated that the landlord's name is different on each of the applications because during the tenancy the landlord's name changed, but that both named landlords in the applications are the same person.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- 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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- 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 tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

This tenancy began as a fixed term tenancy on September 15, 2009 and reverted to a month-to-month tenancy by way of a new tenancy agreement signed by the parties on September 2, 2011, effective September 15, 2011. The landlord provided a copy of the latter tenancy agreement prior to this hearing. Rent in the amount of \$1,400.00 per month was originally payable on the 15th day of each month, which was raised to \$1,450.00 effective September 15, 2010, and there are no rental arrears. On August 28, 2009 the landlord collected a security deposit from the tenant in the amount of \$700.00, and no pet damage deposit was collected.

The landlord testified that the tenant vacated the rental unit without paying for utilities, and provided copies of 2 water bills. The first is a Notice of Overdue Water Account in the amount of \$270.61 dated November 1, 2011, and the second is a water bill in the amount of \$44.69 covering the period from October 1, 2011 to November 25, 2011. The tenant moved out of the rental unit on November 15, 2011, but no one resided in the rental unit between November 15 and November 25, 2011. The landlord testified to being content with the equivalent of a 10 day reduction of that bill.

The landlord also testified to damages in the rental unit after the tenant had vacated. A move-in condition inspection report was provided for this hearing, however the landlord testified that no move-out condition inspection report was completed at the end of the tenancy; the parties quickly walked through the rental unit but were only there for about a half hour and nothing was completed in writing. The landlord gave the tenant a cheque in the amount of \$475.00 which was the return of the \$700.00 security deposit less the \$270.61 water bill, and a credit in the amount of \$45.00 for painting done by the tenant at the tenant's expense, and that the parties had agreed to those amounts. The landlord later put a stop-payment on the cheque.

The landlord testified that the tenant left a hole in a bedroom door, for which the landlord claims \$100.00. No receipt or estimate was provided for this hearing, but the landlord stated that the cost is \$100.00 for a pre-hung door.

The landlord also testified that after the tenant had vacated the landlord noticed that 2 smoke detectors in the rental unit were missing. The landlord had purchased them for

\$35.00 each in 2009, but did not provide any receipts or estimates for the cost of replacing those items.

The landlord also testified that the tenant had broken the exterior light fixture, and pricing them at Rona and Home Depot showed that they cost anywhere between \$20.00 and \$50.00. The landlord claims \$35.00 plus tax, although no proof of that cost has been provided.

The landlord also claims garbage removal at \$50.00. When making the application for dispute resolution, the landlord testified that it was assumed the landlord would have to hire someone with a truck to remove garbage, but the landlord travelled from the lower mainland to Vancouver Island where the rental unit is located with a truck, and stated that the dump fee was actually \$21.00. No receipt has been provided, but the landlord claims the lower amount of \$21.00 and not \$50.00.

The landlord further testified that the tenant had painted the inside of the rental unit but left streaks and the rental unit requires painting again. The re-painting has not yet been done, but based on hiring painters in the past, the landlord claims \$350.00.

The landlord further testified that the tenant was not supposed to have a dog, but the neighbour reported to the landlord that the tenant did in fact have a dog. The landlord claims that the tenant's dog damaged a gate, for which the landlord claims \$150.00. The gate has not yet been replaced or repaired, and no receipts or estimates have been provided.

The landlord also testified to returning to the rental unit to remove garbage in December, 2011 and claims \$200.00 for that trip. Receipts for ferry trips to and from the rental unit were provided in the amount of \$79.50 each.

The tenant testified that rent was raised on August 15, 2010 but the tenant was not provided with 3 month's notice, nor was the tenant served with a notice of rental increase.

The tenant had agreed that the landlord could keep \$270.61 for the water bill, and the landlord gave the tenant a cheque in the amount of \$475.00 on November 11, 2011, but the landlord put a stop-payment on that cheque, and the tenant was charged \$7.00 by the financial institution for the returned cheque and provided evidence of that fee. The tenant's claim is for double the amount of the security deposit that the landlord put a stop payment on, in addition to the \$7.00 service fee.

The tenant also testified to painting the rental unit a week before moving out, although during the tenancy the tenant removed wall paper as well. Further, the landlord had told the tenant that the tenant had done a good job with the painting.

The tenant also testified to returning to the rental unit to ensure that the tenant's responsibility for the end of a tenancy was satisfied in order to protect the security deposit. Some items required some attention, and the tenant dealt with it at that time. The tenant also provided copies of emails exchanged between the parties wherein the landlord told the tenant that the tenant had the option of cleaning up the yard and removing items left in the shed or the landlord would be required to hire someone else to do so and the cost would be deducted from the security deposit.

Analysis

Firstly, with respect to the unpaid utilities, the tenant does not disagree that the water bills are the tenant's responsibility. I therefore find that the landlord has satisfied a claim in the amount of \$270.61 for the first bill. With respect to the last bill, I find that the bill is for a period of 56 days, the last 10 of which are not the tenant's responsibility. I find that the landlord is entitled to a claim of \$36.71 for that bill.

The *Residential Tenancy Act* requires a landlord to ensure that a move-in and a move-out condition inspection report is completed before the tenancy begins and again after the tenancy ends. If the landlord fails to ensure that both reports are completed, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord did not cause a move-out condition inspection report to take place, and therefore I must find that the landlord's right to claim against the security deposit for damages is extinguished, and I so find. The landlord in this case has applied for damages as well as unpaid utilities, and I find that the landlord's right to claim against the security deposit for unpaid utilities is not extinguished.

The *Residential Tenancy Act* also states that a landlord must return to the tenant the entire security deposit or apply for dispute resolution claiming against that deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, unless the tenant otherwise agrees in writing. If the landlord fails to do so, the *Act* states that the landlord must pay the tenant double the amount of the security deposit or pet damage deposit. In this case, I find that the tenancy ended on November 15, 2011 and the tenant provided a forwarding address in writing on November 20, 2011, which is acknowledged by the landlord. The landlord's application was filed December 14, 2011 which is well beyond the 15 day period required under the *Act*, and therefore, I must find that the tenant is entitled to double

recovery of the deposit. Although the landlord gave the tenant the agreed upon amount, the landlord put a stop-payment on the cheque and the tenant really received nothing other than a \$7.00 charge from the financial institution. Therefore, I find that the tenant is entitled to double recovery of the security deposit and \$7.00 for the service fee, for a total of \$1,407.00.

With respect to the landlord's claim for damages, in order to be successful with such a claim, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, there is no evidence by way of a move-out condition inspection report of damages caused by the tenant because one does not exist. I further find that the landlord has failed to establish element 3 of the test for damages. The landlord mostly gave estimates of the value of the damages claimed and stated that some of the work has not been done; the unit has not been re-painted, the gate has not yet been replaced or repaired, the exterior light fixture and smoke detectors have not been replaced, and no receipts have been provided for garbage removal. In the circumstances, I find that the landlord has failed to establish a claim for damages.

With respect to the landlord's claim for travel expenses, I find that the landlord has failed to establish that the landlord had to travel to the island for a specific trip caused by the tenant's actions. The tenancy lasted just over 2 years, and the landlord is in the business of renting the rental unit. I find that travel is inevitable, and the landlord cannot hold the tenant responsible for those costs unless the landlord can establish that the landlord didn't have to attend at Vancouver Island for any other reason. I can make no such finding in the evidence before me. The tenant moved from the rental unit at no surprise to the landlord, and the landlord attended at the rental unit for a quick walk-through on November 11, 2011. If the landlord had any claim for damages or felt that the tenant had not satisfied the tenant's obligations, the landlord ought to have advised the tenant at that time, but didn't. In fact, the landlord gave the tenant a cheque at that time. The landlord returned to the rental unit in December, 2011 but there is no evidence before me that the trip was entirely for the purpose of dealing with the end of this tenancy since the landlord had already done so on November 11, 2011. I therefore find that the landlord's application for travel expenses cannot succeed.

In summary, I find that the landlord is entitled to \$307.32 for unpaid utilities; the tenant is entitled to recovery of double the amount of the security deposit in the amount of \$1,400.00, and recovery of the service charge of \$7.00. The landlord's application for a monetary order for damages has not been proven and must be dismissed.

The *Residential Tenancy Act* also states that where a party is ordered to pay any amount to another party, the amounts may be set off from one another, and I find it prudent to make such an order in this case. Therefore, I order that the landlord pay to the tenant the difference of \$1,099.68.

Since both parties have been partially successful with the applications before me, I decline to order that either party recover the filing fee for the cost of these applications from the other party.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for damages is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,099.68. This order is final and binding on the parties and may be enforced.

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: February 17, 2012.

Residential Tenancy Branch