



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for unpaid rent or utilities, a loss of rental income, cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

In a previous proceeding between these parties held on March 29, 2012, the Landlord was ordered to return the Tenant's security deposit (plus compensation equal to the security deposit) as well as \$252.80 representing an overpayment of rent for August 2011. In this matter, the Landlord seeks not only an Order cancelling the award of \$252.80 but also to recover the security deposit. However, the Landlord applied for a review of the previous decision and her application was dismissed. Consequently, I find that the issue of the security deposit and overpayment of rent has already been dealt with and the Landlord is barred by the legal principle, *res judicata*, from making a claim for those things and there is no authority under the Act for me to cancel the previous Order.

Issue(s) to be Decided

1. Are there rent and/utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income?
3. Is the Landlord entitled to compensation for cleaning expenses?

Background and Evidence

This tenancy started on December 1, 2010. The Tenant vacated the rental unit on August 1, 2011. At the beginning of the tenancy rent was \$600.00 per month plus 1/3 of the utilities (electricity and water) for the rental property. The Landlord claims that as of May 1st, 2011, the Tenant began paying \$700.00 per month which included utilities however the Tenant claims this started as of February 1, 2011.

The Parties agree that in mid-April 2011, the Landlord approached the Tenant about rent and utility arrears as well as an unpaid security and pet deposit. The Parties also agree that the Tenant gave the Landlord three post-dated cheques in the amount of \$126.40 payable in June, July and August 2011 respectively for a total of \$379.20. The Landlord claimed that \$245.00 of this amount was for utility arrears up to and including May 15, 2011 and that \$192.00 of it was for the shortfall of the security deposit. The Parties further agree that the first post-dated cheque for was returned for non-sufficient funds.

The Parties also agree that a payment of \$700.00 for August 2011 rent was made to the Landlord on behalf of the Tenant. The Landlord said she returned \$447.20 of this amount to the Tenant and kept the balance of \$252.80 representing the first two cheques. The Landlord returned the second cheque to the Tenant at the end of the tenancy but did not cash the third cheque (which is now stale dated).

As indicated above in previous proceedings, the \$252.80 retained by the Landlord was found to have been an overpayment of rent for August 2011 to which the Landlord was not entitled and which she was ordered to repay. Consequently, the Landlord sought to recover the \$379.20 (for previous rent arrears, utilities and security deposit) that the Tenant agreed to pay. The Landlord also claimed that the Tenant has not paid utilities in the amount of \$126.69 for the period March 15 – April 30, 2011. The Tenant argued that she is not responsible for repaying the Landlord for utilities after February 1, 2011 because they were included in her rent. The Tenant also argued that she should not have to pay any utility arrears because the upstairs tenants used significantly more water and electricity that she did.

The Landlord provided copies of all utility statements for the tenancy on which she has calculated the amount for which the Tenant was responsible. The Landlord also provided copies of 6 receipts for cash payments and a list of charges and payments made by the Tenant.

The Landlord said the Tenant gave her written notice on July 7, 2011 that she was ending the tenancy on August 1, 2011. The Landlord said she accepted the Tenant's late notice provided that she left the rental unit in a suitable condition so that it could be re-rented. The Landlord said when she arrived at the rental unit at noon on August 1, 2011 to do a move out inspection, the Tenant was not ready so she returned again at 3 pm but the Tenant was still not ready so she returned around 6 pm only to find that the Tenant was not there and had left the keys in the mail box. The Landlord claimed that

the Tenant also left boxes and some furniture in the driveway and some belongings in the rental unit. The Landlord said she was not sure if the Tenant had vacated or not so she tried to contact her by telephone but was unable to reach her for another 4 days and at that time the Tenant did not want to participate in an inspection. Consequently, the Landlord said she did the inspection with another person and took pictures of the rental unit.

The Landlord also claimed that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. In particular, the Landlord said she spent 4 hours trying to wash a strong smell of cat urine off of a laundry room wall, 8 hours cleaning the rental unit inside and a further 4 hours picking up the Tenant's cat feces from the yard. Consequently the Landlord sought \$320.00 for cleaning expenses and \$250.00 for garbage removal expenses. The Landlord said her daughter was supposed to move into the rental unit on August 1st but because it was not ready to move into, she could not move in until September 1, 2011. As a result, the Landlord claimed that she lost rental income for August 2011 of \$700.00.

The Tenant claimed that it was a very hot day so she waited until 6 pm on August 1, 2011 before she returned to the rental unit to finish cleaning but the key had been removed. The Tenant said she did not leave any personal belongings behind in the rental unit other than some cleaning products. The Tenant claimed that the boxes in the driveway belonged to the upstairs tenants and that she only left a sofa in the driveway and made arrangements with a charity to pick it up.

The Tenant denied that the rental unit was not reasonably clean. The Tenant said the laundry room was shared with the upstairs tenants and her cats never went into that room nor did they ever go outside. The Tenant said the rental unit is a one bedroom suite that is only 600 square feet in area. The Tenant said although she could not finish the cleaning much of it had already been done and it was in good enough condition to move into.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant is responsible for the amounts she has claimed. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find on a balance of probabilities that it was not until May 1, 2011 that the Tenant's rent changed from \$600.00 plus 1/3 of the utilities to \$700.00 including utilities. Consequently, I find that the Tenant is responsible for paying utilities up to and including April 30, 2011.

Based on the documentary evidence of the Parties, I find that there was a balance owing of \$379.20 as of April 13, 2011. However, I also find that this amount included the required but unpaid combined security deposit and pet deposit of \$450.00. In the Parties' previous hearing, the Tenant was found to have paid \$100.00 forward the required security deposit. Consequently, I find that \$350.00 of the \$379.20 sought by the Landlord is actually for the balance of the security and pet deposit that was not paid and for which she is not now able to request. As a result, I find that only **\$29.20** is outstanding for rent and/or utilities up to March 15, 2011. Based on the utility statements provided by the Landlord, I find that the Landlord is also entitled to recover unpaid utilities for the period March 15 – April 30, 2011 in the amount of **\$126.69**.

I do not give any weight to the Tenant's argument that she should not have had to pay utilities because the other tenants in the rental property used more of them. The Tenant agreed to be responsible for 1/3 of the utilities and therefore, it is not now open to her to try to change that agreement. Furthermore, I find that the Parties' agreement reflected the fact that the upstairs tenants would use twice the amount used by the Tenant. .

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear.

Although the Landlord claimed that the Tenant refused to participate in a move out inspection, I note that in the Parties' previous hearing, the Dispute Resolution made a finding to the contrary. Consequently, I find that I cannot give any weight to the Landlord's condition inspection report she completed on May 4, 2011 without the Tenant. However, the Tenant did not dispute the authenticity of the Landlord's photographs that she took that day and therefore I find that they are the best evidence of the rental unit at the end of the tenancy.

The Landlord's photographs show a sofa, armchair, lawn chair and some empty boxes in the driveway of the rental property. The Landlord's photographs also show that a toaster oven, a small box of toiletries and a box of board games were left inside the rental unit. The Landlord further provided a few photographs showing areas that needed some light cleaning. I cannot conclude on the basis of the Landlord's

photographs that 12 hours of cleaning was required to bring the rental unit to a “reasonably clean” standard. Instead I find that a maximum of 3 hours should have been sufficient for this purpose. Furthermore, given the evidence of the Tenant that her cats did not go outside, I cannot conclude that the Tenant should be responsible for cleaning up feces outside. Consequently, I award the Landlord a total of **\$70.00** for cleaning expenses and supplies.

I also find on a balance of probabilities that the majority of the furniture and boxes left in the driveway belonged to the Tenant. The Landlord claimed that she incurred expenses of \$250.00 to remove and dispose of the sofa, arm chair, lawn chair. I find that this amount is excessive given the few number of items involved and therefore I award the Landlord the amount of **\$150.00** which includes disposal fees.

Finally given that I have found that there were only a few items of furniture left in the driveway to dispose of and little cleaning necessary inside at the end of the tenancy, I cannot conclude that the condition of the rental unit prevented the Landlord’s daughter from moving in. Consequently, I find that there is insufficient evidence to support the Landlord’s claim for a loss of rental income and it is dismissed without leave to reapply.

I find that the Landlord is entitled pursuant to s. 72 of the Act to recover from the Tenant the **\$50.00** filing fee she paid for this proceeding. As a result, I find that the Landlord has established a monetary claim for \$405.89. The Landlord also sought to recover expenses for photographs, however with the exception of the filing fee under s. 72, the Act does permit a party to recover their costs of bringing and participating in dispute resolution proceedings and as a result, that part of the Landlord’s application is dismissed without leave to reapply.

Conclusion

A Monetary Order in the amount of \$425.89 has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 31, 2012.

Residential Tenancy Branch