



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNDC; FF

Introduction

This Hearing was convened to consider the Landlord's application for a Monetary Order for damages to the rental unit and unpaid utilities; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that she served the Notice of Hearing documents and copies of the Landlords' documentary evidence, by handing the documents to the Tenant's advocate on June 7, 2012. The Tenant's advocate stated that she had accepted service on behalf of the Tenant. Therefore, I am satisfied that the Tenant was sufficiently served pursuant to the provisions of Section 71(2)(c) of the Act.

The Tenant testified that she served the Landlord's agent with copies of her documentary evidence on July 27, 2012. The Landlord stated that the Tenant's evidence was irrelevant and that she wished to proceed with the Hearing despite the late service.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Landlord and her agent provided the following testimony and documentary evidence:

The Landlord's agent testified that the Tenancy began on March 1, 2011 and ended on December 31, 2011 as a result of a Two Month Notice to End Tenancy for Landlord's Use. Monthly rent was \$1,500.00. The Tenant paid a security deposit in the amount of \$750.00 at the beginning of the tenancy.

The Landlord's agent testified that the security deposit was awarded to the Tenant at a previous Hearing, held on April 23, 2012.

No Condition Inspection was performed at the beginning or the end of the tenancy.

The Landlord did not provide a monetary work sheet with her Application for Dispute Resolution setting out her damage claim or the amounts she was claiming. During the Hearing, the Landlord testified that the Tenant caused the following damage to the rental unit:

• Damage to carpet, requiring replacement	\$3,000.00
• Walls painted bright colours, holes in walls, requiring patching and repainting	\$400.00
• Dishwasher rendered inoperable, requiring replacement	\$300.00
• Damage to French door, blinds and closet doors, requiring repairs	\$850.00
• Abandoned desk, requiring removal and disposal	<u>\$100.00</u>
	\$4,650.00

In addition, the Landlord claims unpaid utilities in the following amounts:

• Outstanding gas bill	\$42.16
• Outstanding hydro bill	\$35.12
• Outstanding water bills	<u>\$545.00</u>
	\$622.37

The Landlord stated that the carpet was new in August, 2010, the dishwasher was a 1½ years old, and the blinds were 5 years old.

The Landlord stated that she has not yet done the repairs or replaced the items because she is waiting for her monetary award in order to pay for it.

The Landlord provided 7 photographs in support of her application.

The Tenant gave the following testimony and documentary evidence:

The Tenant's advocate stated that the Tenant has not been provided with a monetary breakdown for the Landlord's claim and that it differs from the amount the Landlord demanded in a letter dated April 24, 2012. Neither party provided a copy of the April 24, 2012 letter in evidence.

The Tenant agreed that she is responsible for paying the last gas and water bill, but submitted that she is not responsible for paying the water bill. She stated that the water

bill goes directly to the Landlord and there was no clause in the tenancy agreement that she was responsible for paying the water bill.

The Tenant testified that the carpets were worn, torn and shabby when she moved into the rental unit. The Tenant provided an affidavit from the previous occupant in evidence. The Tenant stated that the previous occupant visited her at the rental unit after the Tenant moved in and noted that the carpets were the same carpets.

The Tenant stated that the dishwasher stopped working two days after she moved in, but the Landlord did not repair it so she made do without a dishwasher.

The Tenant testified that she was not certain if the window in the French door was cracked when she moved in so she was not sure whether she was responsible for the crack or not.

The Tenant testified that the closet door in the hallway was missing when she moved in, so she moved the closet doors in one of the bedrooms to the hall closet. The Tenant stated that there were also closet doors stored in the garage that had been there since the beginning of the tenancy.

The Tenant testified that the blinds were more than 5 years old when she moved in and were missing several slats. She stated that she took them down and placed them immediately into storage. The Tenant testified that she offered to re-hang them, but the Landlord declined her offer.

The Tenant stated that she painted the rental unit at the beginning of the tenancy because the walls hadn't been painted in a long time. She painted the bedrooms and the two bathrooms. She stated that she offered to paint them back to the original colour, but the Landlord said not to bother.

The Tenant stated that the abandoned desk was in the rental unit when she moved in.

The Landlord gave the following reply:

The Landlord stated that the carpets showed more tears at the end of the tenancy than at the beginning. She stated that the Tenant had no proof that three deep gouges were present at the beginning of the tenancy. She stated that there was further damage to the carpets after the previous occupant moved out.

The Landlord testified that the Tenant called her about the broken dishwasher about a month after the Tenant moved into the rental unit. She stated that she told the Tenant to bring her an estimate of the cost to fix the dishwasher, but the Tenant didn't do so.

The Landlord testified that the closet doors that were in the garage at the end of the tenancy were placed there by the Tenant and that she believes some are missing.

The Landlord stated that the blinds were in good working order when the Tenant moved in, with no missing slats. She stated that the Tenant did not offer to re-hang them.

Analysis

This is the Landlord's claim for damage or loss under the Act and therefore **the Landlord has the burden of proof to establish her claim** on the civil standard, the balance of probabilities.

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

The Landlord did not comply with Sections 23 and 35 of the Act, which place the onus on a landlord to complete a Condition Inspection Report with a tenant at the beginning and at the end of the tenancy. I heard conflicting evidence with respect to the condition of the rental unit at the beginning of the tenancy. The Tenant provided an Affidavit from the previous occupant, which supports the Tenant's testimony regarding the condition of the carpet and walls when the Tenant moved in. The affidavit also attests that the previous occupant resided in the rental unit for approximately 5 years and that the carpets were not replaced during her tenancy. The Landlord's photographs were taken at the end of the Tenant's tenancy, and so do not indicate the condition of the carpets and walls at the beginning of the tenancy. The Landlord provided no documentary evidence with respect to the condition of the dishwasher, blinds, closet doors or French door at the beginning of the Tenant's tenancy; or documentary evidence that the abandoned desk was not present at the beginning of the tenancy.

I find that the Landlord has failed to provide sufficient evidence to prove her claim for damages to the rental unit. She has not proven that the damages claimed occurred due to the actions or neglect of the Tenant and has not provided any evidence to prove the actual amount required to compensate for the claimed loss or to repair the damage (for example, copies of estimates). Therefore this portion of her claim is dismissed without leave to reapply.

With respect to the Landlord's claim for unpaid utilities, I am satisfied that the Tenant owes the Landlord the total amount of **\$77.28** for outstanding gas and hydro charges. The Landlord did not provide copies of the bills in evidence, however the Tenant acknowledged during the Hearing that those bills, in that amount, were her responsibility.

Both parties referred to a previous Decision dated April 23, 2012. A search of the Residential Tenancy Branch's electronic filing system indicates that the Dispute Resolution Officer awarded the Tenant compensation pursuant to Section 32(6) of the Act, and also made a finding that the Tenant was responsible for paying the cost of gas, hydro and cable bills.

I find that garbage pick-up, water and sewage charges are the responsibility of the home-owner unless there is a clause to the contrary in the tenancy agreement. The Landlord did not provide a copy of the tenancy agreement in evidence, or a copy of the water bill proving the amount required to compensate her. Therefore, I dismiss the Landlord's claim for the cost of the water bill without leave to reapply.

The Landlord has been largely unsuccessful in her claim and therefore I find that she is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

I hereby provide the Landlord a Monetary Order in the amount of **\$77.28** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: August 16, 2012.

Residential Tenancy Branch