

DECISION

Dispute Codes:

Landlords' application filed September 20, 2012: MND; MNR; MNSD; MNDC; FF

Tenant's application filed November 27, 2012: O; FF

Introduction

This Hearing was scheduled to consider cross applications. The Landlords seek a Monetary Order for damages, loss of revenue and the cost of serving the Tenant; to retain the security deposit in partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks an Order that the Landlords be compelled to add a co-tenant as a Respondent in the Landlords' application; and to recover the cost of the filing fee from the Landlords.

The Landlord testified that she mailed the Notice of Hearing documents to the Tenant, by registered mail, on September 21, 2012. The Landlord provided a copy of the registered mail receipt and tracking number in evidence

The Tenant testified that he served both of the Landlords with his Notice of Hearing documents by registered mail sent on November 29, 2012. The Tenant provided copies of both of the registered mail receipts and tracking numbers in evidence. The Landlord acknowledged receiving the Tenant's documents on November 30, 2012.

The Landlord testified that she sent copies of her documentary evidence, including an amended Monetary Order Worksheet, on December 3, 2012, by registered mail. The Tenant acknowledged receipt of the documents on December 5, 2012.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Landlords be compelled to add the co-tenant as a Respondent?

- Are the Landlords entitled to compensation for loss of revenue from September 1 to October 14, 2012; for the cost of cleaning the rental unit and repairs to the rental unit; and for the cost of serving the Tenant with documents?
- May the Landlords deduct their monetary award from the security deposit?

Background and Evidence

The co-tenant ("CC") and another occupant moved into the rental unit on July 15, 2011. The other occupant moved out of the rental unit and the Tenant moved in on or about January 8, 2012. CC's tenancy agreement was amended to remove the other occupant and add the Tenant on January 8, 2012, which the Tenant signed.

Monthly rent was \$1250.00, due on the first day of each month. A security deposit in the amount of \$625.00 was paid on July 11, 2011, by CC. The Landlords are holding the security deposit.

The parties agree that CC moved out on August 10, 2012. The Landlord stated that CC did not provide notice that he was ending the tenancy. Rent was paid in full for August, 2012.

The Landlord testified that she inspected the rental unit in mid-August and found a lot of damage. She issued a One Month Notice to End Tenancy for Cause on August 23, 2012, effective September 30, 2012. The Tenant did not pay rent when it was due on September 1, 2012, so the Landlord issued a 10 Day Notice to End Tenancy on September 2, 2012, and hired a bailiff to serve the Tenant on September 2, 2012.

The Tenant accepted the 10 Day Notice and moved out on September 11, 2012. The Landlord re-rented the rental unit on October 15, 2012.

The Landlord stated that the rental unit required cleaning and repairs at the end of the tenancy, the cost of which she seeks from the Tenant. The Landlord stated that it took professional cleaners 5 hours to clean the rental unit, plus the Landlords' time of 3 or 4 hours.

The Landlords provided copies of invoices and photographs in evidence. The Landlords seek a monetary award, calculated as follows:

Description	Amount
Professional cleaners	\$196.00
Painting	\$600.00
Replace plastic plug in kitchen sink	\$8.95
Replace plastic drawer in fridge	\$92.43

For cleaning washer and dryer	\$17.30
Carpet cleaning	\$87.36
Hardware to repair bifold door	\$10.83
Granite counter top cleaner	\$32.45
Touch up kit for hardwood floor	\$21.59
Replace burned out light bulbs	\$22.66
Deadbolt and door stop	\$23.49
Loss of income (September 1 – October 14, 2012)	\$1,825.00
Bailiff's fee	\$100.00
Cost of registered mail	\$10.42
TOTAL CLAIM	\$3,048.48

The Tenant stated that CC had left a real mess and that he was in the middle of cleaning when the Landlord showed up at the rental unit. He stated that he did not finish cleaning the rental unit because the Landlord told him not to clean it because she just wanted him out. The Tenant stated that he felt intimidated by the Landlord, who told him that he had no rights and that her friend, a police officer, was moving into the rental unit. He testified that he did not pay any rent for September, 2012.

The Tenant acknowledged that a wall was damaged when he and CC got into a fight, but testified that much of the damage that the Landlords are claiming was already there when he moved in. The Tenant stated that the Landlords did not perform a condition inspection report when he moved into the rental unit.

The Tenant stated that CC broke the dead bolt and that the Tenant told the Landlord about it. He said that the bifold doors came away from the frame because the screws were loose and that he removed the doors so that they would not be further damaged. The Tenant stated that he told the Landlord about it and asked her to fix it. The Tenant testified that the window hinge was damaged by a workman when he was power washing and that he told the Landlord about it. The Tenant stated that he does not believe he should have to pay for painting the rental unit because the Landlord was going to paint anyway.

The Landlord stated that there was only some minor wear and tear when the Tenant moved in. The Landlord agreed that the Tenant had told her that the bifold door needed repairs. She stated that she walked through the rental unit in February, 2012, and there was no damage and that the damage was done while the Tenant was living there. The Landlord stated that the rental unit was last painted 4 years ago.

Analysis

Regarding the Tenant's application

The Tenant signed the amended tenancy agreement on January 8, 2012, and therefore I find that the Tenant was a co-tenant with CC. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally responsible for debts and damages under the tenancy agreement and also have equal rights under the tenancy agreement. As co-tenants are jointly and severally responsible, a landlord can recover the full amount of unpaid rent or damages from all or any one the tenants. In this case, the Landlords have chosen to seek compensation from the Tenant only.

I dismiss the Tenant's application to compel the Landlords to seek damages from CC. The responsibility falls to the Tenant and CC to apportion any amount owing to the Landlords among themselves.

The Tenant has not been successful in his application, and I find that he is not entitled to recover the cost of filing his application from the Landlords.

Regarding the Landlords' application

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

To prove a loss and have the Tenant pay for the loss requires the Landlords 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.

In making this Decision, I have considered only proven damages since the Tenant moved into the rental unit in January, 2012, which is when this tenancy began. The Landlords remain at liberty to file another application against former tenants if they choose to do so, but only for damages that occurred prior to January, 2012.

Section 37 of the Act requires tenants to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of the tenancy. Tenants are also expected to replace burned out bulbs.

Based on the testimony of both parties and the documentary evidence provided, I find that the Tenant did not leave the rental unit reasonably clean. The Landlords provided a copy of the cleaners' invoice in the amount of \$175.00 plus GST (total **\$196.00**) for 5 hours of work and this portion of the Landlords' claim is allowed. I also allow the Landlords' claim for the cost of replacing light bulbs in the amount of **\$22.66** and cleaning the carpets in the amount of **\$87.36**, pursuant to the invoices provided.

I find that the Landlords did not provide sufficient evidence to prove the remainder of their claim against the Tenant for damages to the rental unit, for the following reasons:

1. The Landlord agreed that the Tenant had advised her of the broken hinges to the bifold door, and I find that the Landlord did not prove that this damage was anything more than reasonable wear and tear.
2. Residential Tenancy Branch Policy Guideline 40 provides a useful life for indoor paint of 4 years. The Landlord stated that the paint was already 4 years old at the end of the tenancy, and therefore I find that the rental unit was due for new paint.
3. The invoice for cleaning the washer and dryer is for the cost of special cleaning products, which I find the Landlords did not demonstrate were required in order to leave the washer and dryer "reasonably clean". Similarly, for the granite counter top.
4. I find that the Landlord did not provide sufficient evidence that the plug, fridge drawer, hardwood floor, dead bolt and door stop were damaged during the Tenant's tenancy (i.e. a condition inspection report completed in January, 2012).

There is no provision in the Act for the recovery of the cost of serving a party and therefore the Landlords' claim for the cost of the bailiff and registered mail is dismissed.

I find that the Landlords are entitled to unpaid rent from the Tenant for the month of September, 2012, in the amount of **\$1,250.00**. In a month-to-month tenancy, if the tenancy is ended for non-payment of rent, a landlord may recover any loss of rent for the next month because a notice given by a tenant to end the tenancy would not end the tenancy until the end of the subsequent month. However, the landlord must comply with Section 7(2) of the Act and take reasonable steps to minimize this loss. In this case, the Landlord submitted that she was not able to re-rent the rental unit before October 15, 2012, because of the damages that required time to repair. However, I have found that the Landlord failed to submit sufficient evidence that the Tenant was responsible for causing the damage and therefore I do not allow the Landlords' claim for loss of revenue from October 1 to 14, 2012.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the security deposit towards partial satisfaction of the Landlords' monetary claim. No interest has accrued on the security deposit.

The Landlords have been partially successful in their application and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Tenant.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Unpaid rent for September, 2012	\$1,250.00
Replace light bulbs	22.66
Cleaning rental unit	\$196.00
Carpet cleaning	\$87.36
Recovery of the filing fee	<u>\$50.00</u>
Subtotal	\$1,606.02
Less security deposit	<u>- \$625.00</u>
TOTAL AMOUNT DUE TO THE LANDLORDS AFTER SET-OFF	\$981.02

Conclusion

I hereby provide the Landlords with a Monetary Order in the amount of **\$981.02** 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: December 17, 2012.

Residential Tenancy Branch