



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant testified that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on March 1, 2013. I am satisfied that the landlord served this package to the tenant and that both parties served their written evidence packages to one another in accordance with the *Act*.

As part of the landlord's evidence package, she included a copy of a Summons to a Payment Hearing issued by the Small Claims Court of B.C. with respect to a previous dispute resolution hearing and decision issued by an Arbitrator appointed under the *Act*. At the current hearing, the parties agreed that a monetary Order was issued in the tenant's favour after a dispute resolution hearing was held on March 1, 2013. The tenant received a monetary Order of \$450.00 at that hearing, allowing her to recover double her security deposit in accordance with section 38 of the *Act* and her filing fee for that application.

At the commencement of the current hearing, I advised the parties that the matter of the tenant's security deposit was subject to a final and binding decision of another Arbitrator appointed under the *Act*. In accordance with the legal principle of *res judicata*, I told the parties that I could not consider the portion of the landlord's current application in which

she sought to obtain authorization to retain the tenant's security deposit. This issue has already been decided and I cannot re-adjudicate this same issue again. For these reasons, I am unable to consider the landlord's application to obtain authorization to obtain any portion of the tenant's security deposit.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on January 1, 2012. As of March 1, 2012, the tenant was paying a monthly rent of \$750.00. The tenant paid a \$200.00 security deposit on or about January 1, 2012. As per the previous Arbitrator's decision, the tenant has obtained a monetary Order to obtain a return of that deposit as part of the \$450.00 monetary Order issued in the tenant's favour.

A different landlord owned this rental property when this tenancy began. The tenant gave undisputed sworn testimony that no joint move-in condition inspection was conducted. Although the landlord testified that she conducted her own move-out condition inspection, she did not create a move-out condition inspection report, so did not send a copy of any such report to the tenant.

The landlord's application for a monetary award of \$1,280.00 (plus the recovery of her \$50.00 filing fee) included a request for the recovery of \$700.00 for unpaid rent for June 2012, \$280.00 for cleaning the rental unit at the end of this tenancy, and \$300.00 to repair a pump.

The parties agreed that the tenant vacated the rental unit on June 2, 2012. The tenant testified that there was initially a written mutual agreement to end this tenancy by April 30, 2012. She also testified that there was a mutual oral agreement to extend this tenancy until May 31, 2012. The tenant entered into written evidence a copy of a Mutual Agreement to End a Tenancy on a standard Residential Tenancy Branch (RTB) form. Although the tenant appears to have signed this agreement, there is no signature from the landlord on this agreement. Both parties agreed that the tenant paid all of her \$750.00 rent for May 2012, but did not pay any rent for June 2012.

The landlord testified that she never signed any Mutual Agreement to end this tenancy and never entered into an oral agreement to end the tenancy. The landlord testified that

she did not know that the tenant was vacating the rental unit on June 2, 2012. She testified that she spoke with a friend who was looking for a place to rent and was able to move into the rental unit the following day on June 3, 2012. She said that she received \$600.00 in rent for June 2012 from the new tenant.

The landlord testified that there was a lot of damage to the rental unit at the end of this tenancy. She submitted handwritten receipts and statements from individuals she described as a private plumber and a private cleaner.

The tenant testified that the premises were damaged and very dirty when she first occupied the rental unit. She submitted a written statement from the previous landlord confirming some of the conditions that the tenant claimed were wrong with this two bedroom suite when the tenancy began in January 2012. Of particular note to the landlord's claim was the statement that "kitchen drain had blockage problem." The tenant said that the problem with the drain in the kitchen was given a temporary repair by the landlord at that time, but that this repair was not designed as a permanent remedy to the drain problem.

Analysis – Loss of Rent for June 2013

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for June 2012, the tenant would have needed to provide her notice to end this tenancy before May 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Since the Mutual Agreement to End a Tenancy was signed by only the tenant and cited April 30, 2012 as the end date for this tenancy, I find that the tenant did not provide the notice required under either section 45(1) or 52 of the *Act* to end this tenancy.

There is undisputed evidence that the tenant did not pay any rent for June 2012, and did not vacate the rental unit until June 2, 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the landlord was successful in locating a new tenant who took possession of the rental unit on June 3, 2012, the day after the tenant vacated. While this mitigated the tenant's losses for June 2012, I find that it calls into question the landlord's evidence

that she was unaware that the tenant was planning to vacate the premises early in June 2012. Finding a tenant who would be able to take occupancy of this rental unit on such short notice seems highly unlikely. However, I do accept that the landlord has taken suitable steps to mitigate the tenant's losses for June 2012 and has discharged her responsibility under section 7(2) of the *Act* to mitigate the tenant's losses.

Based on the landlord's undisputed evidence regarding the rent paid by the new tenant for this rental suite for June 2012, I find that the actual amount of rental loss that the landlord experienced for June 2012 was \$150.00 (i.e., \$750.00 - \$600.00 = \$150.00). In coming to this determination, I also note that the tenant did remain in the rental unit for two of the thirty days of June and would be responsible for 1/15 of the monthly rent even if I were to have accepted her claim that she legally ended her tenancy as of May 31, 2012. I issue a monetary Order in the landlord's favour in the amount of \$150.00 to recover her loss of rent for June 2012.

Analysis – Damage

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in and move-out condition inspections and inspection reports are very helpful. In this case, no joint move-in or move-out condition inspections were conducted, no report of the landlord's own move-out inspection was issued by the landlord, and conflicting evidence was provided by the parties as to the condition of the premises at the beginning and end of this tenancy. The tenant provided sworn testimony supported by a letter from the landlord who owned the rental property when her tenancy commenced that the tenant reported many items damaged or needing repair at the start of her tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Without the required move-in and move-out condition inspections and inspection reports, the landlord's ability to challenge the tenant's evidence regarding the condition of the premises is somewhat limited. However, the landlord can still claim for damage arising out of a tenancy and section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear."

Based on the oral and written evidence of the parties, I find on a balance of probabilities that the tenant did not fully comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean" as some cleaning was likely required by the landlord after the tenant vacated the rental unit. For that reason, I find that the landlord is entitled to a nominal monetary award of \$50.00 for general cleaning that was required at the end of this tenancy.

I dismiss without leave to reapply the landlord's application for a monetary award for the repair of a pump. I do so as I am not at all satisfied that the landlord has demonstrated that these repairs arose from the tenant's actions during this short tenancy or that any damage that did occur exceeded what would be anticipated as a result of reasonable wear and tear. In making this determination, I find that the tenant's evidence as to the condition of the rental unit at the beginning of this tenancy was far more convincing than the evidence submitted by the landlord.

As the landlord has been partially successful in her application, I allow her to recover one-half of her \$50.00 filing fee for her application from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses in rent, damage arising out of this tenancy and part of her filing fee for this application.

Item	Amount
Losses in Rent - June 2013	\$150.00
Cleaning	50.00
Recovery of Partial Filing Fee	25.00
Total Monetary Order	\$225.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 27, 2013

Residential Tenancy Branch

