



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNR; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for damages, unpaid rent and utilities; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

This matter was originally scheduled to be heard on February 5, 2014. The Landlord sought an adjournment, which the Tenant did not oppose. I granted the Landlord's adjournment application and the matter reconvened on April 8, 2014.

It was determined that the Landlord served the Tenant with the Notice of Hearing documents, by registered mail, and that the parties exchanged their documentary evidence.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter

The Tenant provided documentary evidence and written submissions indicating that she believes that the Landlord owes the Tenant compensation for damage or loss as a result of the Landlord's breach of the Act. It is important to note that the Tenant did not file an Application for Dispute Resolution.

Issues to be Decided

- Is the Landlord entitled to unpaid rent and compensation for loss of revenue for the months of September, October and November, 2013?
- Is the Landlord entitled to a monetary award for damage to the hardwood floor and for cleaning the rental unit?
- May the Landlord apply the security deposit towards her monetary award?

Background and Evidence

The rental unit is one of three suites in a house. The Landlord lives on the top floor, the Tenant lived on the main floor and another occupant resides in the basement.

The parties did not sign a tenancy agreement; however, they agreed that the Tenant moved into the rental unit in May, 2013. Monthly rent was \$1,500.00. Rent did not include utilities. The Tenant paid a security deposit in the amount of \$700.00 on May 1, 2013.

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

The parties disagreed with respect to the amount the Tenant was required to pay in utilities. The Landlord testified that the Tenant's share was 50%. The Tenant testified that her share was 40%. The parties also disagreed with respect to the date that rent was due. The Landlord stated that rent was due on the first day of the month. The Tenant stated that rent was due on the 10th of the month because she moved into the rental unit on May 10, 2013.

The Landlord made the following submissions:

The Landlord submitted that the Tenant owes her share of utilities for the months of August and September, 2013, in the amount of **\$68.16**. The Landlord provided copies of utility bills in evidence.

The Landlord's Application for Dispute Resolution indicates that she is seeking compensation for unpaid rent for October and loss of revenue for November, 2013, in the amount of \$3,000.00. However, the Landlord stated that she seeks to amend her Application to include unpaid rent for September, 2013. She testified that the Tenant placed a "stop payment" on her September and October rent cheque. She stated that the Tenant moved out without due notice on October 11, 2013. The Landlord stated that she re-rented the rental unit effective April 1, 2014. The Landlord seeks a monetary award in the amount of **\$4,500.00** for this portion of her claim.

The Landlord testified that the hardwood floors had been refinished immediately before the tenancy began and that the Tenant damaged the floors. The Landlord stated that it looked like a sharp instrument such as a knife was used and that she believed the Tenant did it deliberately. The Landlord stated that she had an estimate for the repairs to the floors in the amount of \$446.25. The Landlord provided a copy of the estimate in evidence. The estimate gives two options (one for recoating a small area and one for recoating the entire dining room). I questioned the Landlord about the estimate, who

stated that she chose to have the entire dining room recoated and paid **\$288.75**. The Landlord provided photographs of the floors in evidence.

The Landlord stated that the Tenant did not clean the rental unit to a reasonable standard at the end of the tenancy. The Landlord seeks a monetary award in the amount of **\$100.00** for the cost of cleaning the rental unit. The Landlord provided a copy of a returned cheque in the amount of \$110.00, which she stated was payment for the cost of cleaning.

The Tenant made the following submissions:

The Tenant agreed that she owed the Landlord money for unpaid utilities and stated that she would pay 40% of the utility bills for August and September, 2013.

The Tenant testified that she paid rent for the month of September, 2013, and that she has the cancelled cheque to prove it.

The Tenant stated that the Landlord used to be a friend but that she began making more and more unreasonable demands upon the Tenant and verbally abused her. The Tenant stated that this harassment escalated, and that on September 29, 2013, the Landlord left a note on the Tenant's door advising that the Landlord had rented the rental unit to someone else. The Tenant stated that she did not believe she was required to give the Landlord notice to end the tenancy because the Landlord evicted her. The Tenant stated that the Landlord kept badgering her to move out, so she moved out and provided her forwarding address on October 11, 2013. The Tenant provided copies of notes from the Landlord to the Tenant and a copy of her note to the Landlord including her forwarding address.

The Tenant disputes that she owes the Landlord anything for rent or loss of revenue.

The Tenant stated that she challenges the Landlord's claim for damage to the wood floors. The Tenant stated that the wood floor was scratched under the surface of the coating and that she had noticed it when she moved in. The Tenant stated that she ran her fingers over the marks and that there were no rough edges. The Tenant denies this portion of the Landlord's claim.

The Tenant also disputed the Landlord's claim for the cost of cleaning the rental unit at the end of the tenancy. She stated that the rental unit was clean and that she even paid a man to fill in picture holes that were there at the beginning of the tenancy.

The Landlord gave the following reply:

The Landlord testified that she also had documentary proof that September's rent cheque was not honoured by the Tenant's bank and that she had provided a copy of the dishonoured cheque in evidence. I advised the Landlord that I had a copy of a dishonoured cheque for October's rent, but not for September. The Landlord stated that she had meant to provide September's cheque in evidence and that she had documentary proof that September's rent was not paid.

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 its 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.

Regarding unpaid utilities

The Tenant provided testimony regarding the amount of utilities which she owed, which was probable and contrary to the Landlord's testimony. I find that the Landlord did not meet the burden of proof that the Tenant's portion was 50% and therefore find that the Tenant's portion was 40% for utilities. There was no written tenancy agreement with respect to this tenancy, contrary to the provisions of the Act. A written tenancy agreement would indicate the portion of utilities which the Tenant is required to pay. The onus is on a landlord to ensure that a tenancy agreement is signed by the parties at the beginning of a tenancy.

Based on the documents provided, **I find that the Landlord has established a monetary award in the amount of \$64.85 for unpaid utilities**, calculated as follows:

August natural gas (\$33.10 x 40%)	\$13.24
September natural gas (\$57.13 x 40%)	\$22.85

September hydro (\$71.91 x 40%)	<u>\$28.76</u>
TOTAL unpaid utilities	\$64.85

Regarding unpaid rent and loss of revenue

Both parties indicated that they have documentary evidence with respect to whether or not September rent was paid. Therefore, during the Hearing I ordered the Tenant to provide me and the Landlord with a copy of the negotiated rent cheque (front and back). I also ordered the Landlord to provide me and the Tenant with a copy of a bank notice indicating the Tenant had placed a "stop payment" on September's cheque or other documentary evidence proving that the cheque was not honoured.

On April 15, 2014, the Tenant provided the Residential Tenancy Branch with a copy of the front and back of the Tenant's cheque in the amount of \$1,500.00 dated September 1, 2013, and marked "Rent: September, 2013". The back of the cheque was endorsed by the Landlord on September 3, 2013. The Landlord did not provide any documentary evidence to prove that the Tenant's rent cheque for September was not honoured. Therefore, **I find that the Tenant paid rent for the month of September, 2013 and this portion of the Landlord's claim is dismissed.**

The Tenant provided the Landlord with cheques which were dated for the first day of each month. Therefore, **I find that rent was due on the first day of each month.** Sections 44 – 49 of the Act describe the only ways that a tenancy can end. Section 52 of the Act provides that a notice to end the tenancy must be in writing and, when given by the Landlord, must be in the approved form. I find that the Landlord did not provide the Tenant with an effective notice to end the tenancy because it was not in the approved form.

This was a month-to-month tenancy. For the Tenant to end the tenancy, she was required to provide written notice pursuant to the provisions of Section 45(1) or (3) of the Act. I find that the Tenant did not comply with Section 45 of the Act and that the Landlord suffered a loss as a result of the Tenant's breach of the Act. Therefore, **I find that the Landlord is entitled to unpaid rent for the month of October, 2013, in the amount of \$1,500.00.**

With respect to the Landlord's claim for loss of revenue for the month of November, 2013, I find that the Landlord failed to provide sufficient evidence that she followed Section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. The Landlord stated that she re-rented the rental unit effective April 1, 2014, but did not provide sufficient evidence of steps that she took to re-rent the rental unit for

November 1, 2013. Therefore, **the Landlord's claim for loss of revenue for the month of November, 2013, is dismissed.**

Regarding damage to the hardwood floors and the cost of cleaning the rental unit:

The Act requires a landlord to complete a Condition Inspection Report that complies with Part 3 of the Regulation at the beginning and the end of a tenancy. In this case, no such Report was completed. Section 21 of the Regulation provides that a Condition Inspection Report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. In this case, the onus of proof is on the Landlord. I find there is insufficient evidence that the Tenant damaged the hardwood floors, or that the Tenant did not clean the rental unit at the end of the tenancy. **This portion of the Landlord's claim is dismissed.**

Regarding the security deposit

I find that the Landlord relinquished her right to claim against the security deposit pursuant to the provisions of Section 38(5) of the Act.

Therefore, **I ORDER that the Tenant is entitled to return of the security deposit in the amount of \$700.00.** I accept the Tenant's evidence that she provided the Landlord with written notification of her forwarding address on October 11, 2013. The Landlord filed her Application for Dispute Resolution within the required time frame with respect to the security deposit, and therefore I decline to order that the Landlord pay the Tenant double the amount of the security deposit pursuant to the provisions of Section 38(5) of the Act.

Filing fee and set off

The Landlord's claim had some merit and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord has established a total monetary award of **\$1,614.85**. The Tenant is entitled to return of the security deposit in the amount of **\$700.00**. I hereby set off the Tenant's award against the Landlord's and provide the Landlord with a Monetary Order in the amount of **\$914.85**.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$914.85** 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: April 28, 2014

Residential Tenancy Branch

