



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRUDENTIAL KELOWNA PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF (MNR)

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on September 01, 2013 for a fixed term tenancy that was due to end on April 30, 2014 or continue on a month to month basis. The tenants ended the tenancy and vacated on April 30, 2014. Rent for this furnished unit was \$1,600.00 per month due on the 1st of each month, the tenants also agreed to pay a share of the utility bills. The tenant paid a security deposit of \$800.00 on August 30, 2013 and attended the move in condition inspection and appointed an agent to attend the move out condition inspection. The tenants provided a forwarding address by email on April 30, 2014.

The landlord testified that the tenants caused damage to the siding and a window on the upstairs deck with the barbeque. The heat from the barbeque has melted the siding and broken the window. The repair to the siding and window came to \$2485.77. The landlord has provided photographic evidence showing the damage and the invoice for the repair.

The landlord refers to her photographic evidence showing the siding and the barbeque when the tenants moved in. The landlord testified that there was some existing damage from the barbeque which was caused by the previous tenants to the siding as shown in the photograph; however; the landlord testified that the damage became worse when these tenants used the barbeque. The landlord agreed that the move in condition inspection report does not document the existing damage to the siding and testified that it was not noticed at the time of the inspection. The landlord then testified that she did speak about the existing damage to the tenants but failed to document it. The landlord testified that she also failed to document that damage when the previous tenants moved out on their inspection report.

The landlord testified that they had claimed for damage to the pool table cover for \$179.20 but withdraw this section of their claim.

The landlord testified that there are three suites in this house, one suite has its own meter and the other two suites share a meter. The bills are divided as per the number of occupants in each suite and as there was three people residing in this suite and one in the other suite, these tenants share of the utility bills would be 75 percent and the other suite paid 25 percent. The landlord has provided copies of the utility bills one for Fortis of \$112.62 and one for the City bill of \$130.63. Therefore the tenants' share would be \$84.46 for Fortis and \$97.97 for the City bill. The landlord testified that copies of the bills were provided to the tenants in evidence.

The landlord seeks an Order to keep the security deposit of \$800.00 to apply to the damage to the siding and the utility bills. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The tenant EM gave testimony on behalf of both tenants and testified that when they moved into the unit they did discuss the existing damage to the siding. The landlord did not document it on the move in report as the landlord said it was not a big deal. EM testified that they moved the barbeque away from the siding to a safer place and did not cause any further damage to the siding or the window. The damage shown in the landlord's photographic evidence is the same as when the tenants moved into the unit.

EM testified that their roommate attended the move out inspection on their behalf with the landlord; however, the tenants have not been sent a copy of the move out inspection report and this report has not been included in the landlord's evidence for this hearing. The landlord has therefore extinguished their right to file a claim to keep the security deposit for damages and the tenants seek an Order for the landlord to return the security deposit.

EM testified that they do owe some money for utilities. The tenants refer to the landlord's documentary evidence showing an email from the tenants asking the landlord to provide the tenants with the utility bills so the tenants could pay their share of these. EM testified that the landlord did not provide copies of these bills until the tenants

received the landlord's evidence package. The landlord had not broken the bills down to show what the tenants' share should be. EM testified that they agree the landlord can keep the amounts of \$97.97 for the City bill and \$84.46 for the Fortis bill from the tenants' security deposit.

EM testified that the landlord has acted unfairly towards the tenants and has made careless arrears in her submissions and in the inspection report.

The parties decline the opportunity to cross examine the other party.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for damage to the siding and window; I have reviewed the photographic evidence from the landlord and find the photograph taken at the start of the tenancy does show damage to the siding caused by the previous tenants or persons unknown. In this photograph the barbeque is located under the window and next to the siding and obscures the corner of the window which in the landlords other photographs show damage to the siding in the corner of the window and the cracked glass.

I further find that the landlord did not feel it was important enough to document this existing damage on the tenants' move in inspection report and therefore I have insufficient evidence to show that the tenants are responsible for any further damage or that the damage to the siding and window shown in the landlord's photographs taken at the end of the tenancy was not existing damage at the start of the tenancy. I therefore dismiss the landlord's application for damages of \$2,485.77.

With regard to the landlord's claim for unpaid utilities; the landlord's evidence shows that there are unpaid utilities for the tenants' share totaling \$182.43. The landlord's evidence also shows that the tenants did ask the landlord to send copies of the utility

bills so the tenants could pay them. The landlord did not do so until filing for this application and serving the evidence package to the tenants and therefore did not give the tenants the opportunity to settle these utility bills prior to the landlord filing for arbitration. The tenants have agreed the landlord can retain the amount of \$182.47 from the security deposit and the remainder of the deposit must be returned to the tenants.

As the landlord's claim for damages has been unsuccessful and the landlord's claim for unpaid utilities could have been avoided had the landlord sent the tenants the copies of the utility bills as requested prior to filing this application; I must dismiss the landlord's claim to recover the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

The landlord may retain the amount of \$182.43 from the tenants' security deposit of \$800.00 as agreed by the tenants at the hearing. The balance of the security deposit of \$617.57 must be returned to the tenants. The tenants have been issued with a Monetary Order for this amount pursuant to s. 38(6)(b) of the *Act*. This Order must be served upon the landlord. If the landlord fails to comply with the Order, the Order may be enforced in the Provincial (small claims) Court of British Columbia

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: September 24, 2014

Residential Tenancy Branch

