



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNDC; MNR; MNSD

Introduction

This is the Landlord's application for a Monetary Order for damages and unpaid utilities; for compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security and pet damage deposits in partial satisfaction of her monetary award.

The parties gave affirmed testimony at the Hearings. An Interim Decision was made on July 24, 2014, which should be read in conjunction with this Decision.

The Landlord confirmed that she received the Tenant's USB evidence on July 28, 2014.

Issues to be Decided

- Is the Landlord entitled to compensation for overholding?
- Is the Landlord entitled to a monetary award for damages to the rental unit, cleaning, and dump fees?
- Is the Landlord entitled to a monetary award for unpaid utilities?
- May the Landlord apply the security deposit towards her monetary award?

Background and Evidence

This tenancy began on July 1, 2013. Monthly rent was \$950.00, due on the first day of each month. Rent did not include utilities. The Tenants paid a security deposit in the amount of \$475.00 at the beginning of the tenancy. A pet damage deposit in the amount of \$450.00 was also paid in or about August, 2013.

The Tenants moved out on February 28, 2014. A Condition Inspection Report was provided in evidence. The Tenant SM was present at the move in inspection and the Tenant MH was present at the move out inspection. MH did not agree with the Landlord's opinion on the state of cleanliness and repair and provided her reasons on the Condition Inspection Report.

The Landlord's Application for Dispute Resolution indicates a monetary claim as follows:

• Unpaid utility bill from January, 2014	\$155.00
• Carpets	\$150.00
• Laminate plus labour	\$330.00
• Cleaning including glue removal, stove, fridge	\$120.00
• Leaving late	\$32.00
• Paint baseboards	\$60.00
• Exterior light	\$30.00
• Dump fees	\$50.00
• Patch holes	\$10.00
• Electric plate covers	<u>\$2.00</u>
	\$947.00

During the Hearing, the Landlord SR sought to increase her claim for damages.

The rental property is a house with two suites. The Tenants resided in the lower suite. The Landlord and her husband resided in the upper suite. SR testified that utilities were to be split between the Landlord and the Tenants, based on the number of occupants in each suite. SR stated that from July to December, 2014, the Tenants' share was 2/3rds, which the Tenants paid.

MH testified that she requested copies of the utility bills from the Landlord, but was not provided copies until she received the Landlord's documentary evidence. She stated that the Tenants initially paid only ½ of the utilities. MH does not dispute that the Tenants owe \$155.00 for January's utilities.

SR testified that:

- The Tenants damaged the bathroom floor, which had to be replaced.
- There was a strong urine smell in the carpets, which was from the Tenants' cat. SR stated that the carpets were cleaned, but the odour remained, so the Landlords replaced the carpets with laminate.
- The Tenants did not vacate the rental unit until 5:00 p.m. on February 28, 2014. SR stated that the tenancy was to end at 1:00 p.m. The rental unit was re-rented effective March 1, 2014.
- The Tenants did not clean the rental unit sufficiently at the end of the tenancy.
- The Tenants broke an exterior light.
- The Tenants left garbage and a car seat at the rental unit, which the Landlord had to take to the dump.

- The Tenants made a hole in the wall where a cable was situated. Two electric plate covers were missing.

The Landlord provided photographs of the rental unit in support of her claim.

MH provided the following responses to SR's testimony:

- The only stains on the carpet at move-out were stains that were present when the Tenants moved in. The Tenants were going to shampoo the carpets before they moved out, but they ran out of time. MH stated that the Tenants were out of the rental unit by 3:00 p.m., not 5:00 p.m. MH testified that three weeks before the end of the tenancy, the Landlord's husband had agreed to do the move out inspection on March 1, 2014, at noon. One week before the end of the tenancy, SR insisted on doing the inspection on February 28, 2014.
- There was no urine odour in the carpets when the Tenants moved out. MH stated that the Landlord had two large dogs. MH stated that if there was an odour, it was probably from the Landlord's dogs' urine and that it was left after the Tenants moved out.
- The Landlord's photographs were taken 2 weeks after the Tenants moved out.
- The Tenants cleaned the rental unit well before moving out. The Tenants provided a video of the rental unit at the end of the tenancy.
- The exterior light cover was plastic and was screwed in too tight. MH testified that it was old and cracked when the Tenants moved in. She stated that it broke when she was changing the bulb.
- The baseboards were not painted when the Tenants moved in. They were left in the same condition that they were at the beginning of the tenancy.
- MH agreed that the Tenants left a car seat at the rental unit. She agreed to pay for the missing electrical plates.
- MH stated that the cable was sticking out from the wall and that it was safety hazard for her daughter. She testified that she pushed it back into the wall, but that the hole was the same size as it was when the cable was protruding from the wall.

Analysis

The Landlord did not amend her Application in order to increase her monetary claim. Applications cannot be amended by merely providing additional evidence. Therefore, I advised the Landlord that I would consider only the amounts claimed on her Application that was served upon the Tenant.

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 Tenants 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 Tenants 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.

MH agreed that the Landlord is entitled to **\$155.00** for unpaid utilities and **\$2.00** for replacing the electrical plates. MH acknowledged leaving a car seat at the rental property and I find that the Landlord is entitled to her claim in the amount of **\$50.00** for removal of the car seat and dump fees.

A landlord may claim damages for overholding; however, the landlord must prove a loss. In this case, the Landlord suffered no loss of revenue. Therefore, this portion of her claim is dismissed.

The parties both provided pictures or video of the rental unit, which they purport to be taken at the end of the tenancy. This evidence is inconclusive, because it is contradictory. The Landlord also provided a copy of the Condition Inspection Report completed on February 28, 2014. The Residential Tenancy Regulation provides that a Condition Inspection Report, completed in accordance with the provisions of the Act and the Regulation, is evidence of the state of repair and cleanliness of the rental unit on the date the inspection took place (absent any preponderance of evidence to the contrary. In this case, I find that the Landlord failed to provide sufficient evidence that the Tenants' kitten was responsible for the urine smell in the carpets. The Landlord replaced one of the two carpets with laminate and I find that the Landlord is responsible for the cost of that replacement. However, the Tenants did not shampoo the other carpet at the end of the tenancy. I find that the Landlord is entitled to a nominal amount for the cost of shampooing one carpet, in the amount of **\$30.00**.

I find that there is insufficient evidence to support the remainder of the Landlord's claim for damages and those claims are dismissed.

Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct her monetary award from the security deposit.

The Landlord has been only partially successful in her application and I find that she is entitled to recover a portion of the filing fee, in the amount of **\$25.00**.

The Landlord has established a monetary award, calculated as follows:

Unpaid utilities	\$155.00
Electrical plates	\$2.00
Removal of car seat and dump fees	\$50.00
Carpet shampoo	\$30.00
Partial recovery of filing fee	<u>\$25.00</u>
TOTAL monetary award	\$262.00

I order that the Landlord return the balance of the security deposit and the pet damage deposit to the Tenants forthwith. I hereby provide the Tenants with a Monetary Order, calculated as follows:

Security and pet damage deposits	\$925.00
Less Landlord's monetary award	<u>-\$262.00</u>
TOTAL AMOUNT DUE TO THE TENANTS AFTER SET-OFF	\$663.00

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$663.00** for service upon the Landlord, representing return of the security deposit and pet damage deposit after deducting the Landlord's monetary award. 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: November 13, 2014

Residential Tenancy Branch

