



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 was convened by conference call to determine the landlord's issues regarding a Monetary Order for unpaid rent or 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 tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The landlord withdraws her claim for a Monetary Order for money owed or compensation for damage or loss.

The originally hearing held on February 25, 2015 was adjourned as the tenant's evidence had not been received by the Arbitrator. The tenant was instructed in the interim decision to provide that evidence again or provide evidence showing that the tenant had sent her evidence to the Residential Tenancy Branch within the required time of seven days pursuant to section 3.15 of the Rules of Procedure. The tenant's evidence was sent to the Arbitrator and this is documented as having been received on February 20, 2015. Therefore, this shows that the tenant did not provide her evidence within seven days of the original hearing. Consequently, I decline to consider the tenant's late evidence.

The tenant and landlord attended the reconvened 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 tenant confirmed receipt

of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or 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 January 01, 2008 for an initial term of six months. The tenancy continued on a month to month basis and ended on August 01, 2014. Rent for this unit was \$750.00 per month due on the 1st of each month plus 30 percent of utilities. The tenant paid a security deposit of \$350.00 on December 14, 2007. The parties did not conduct a move in condition inspection of the unit together at the start of the tenancy and the landlord did not complete a move in condition inspection report. The parties did complete a move out inspection report together at the end of the tenancy and the tenant provided a forwarding address in writing on August 01, 2014.

The landlord testified that the tenant failed to pay utilities for the last year of the tenancy. The landlord testified that as the tenant was a single mum and a student the landlord decided not to charge the tenant for utilities for the last year from June, 2013 to July, 2014. No utility bills were therefore provided to the tenant. However, the landlord testified that at the end of the tenancy the tenant became hostile towards the landlord so the landlord now seeks to recover the utility bills and has provided copies of these bills and a breakdown for the tenant's 30 percent share of each bill in documentary evidence. The landlord seeks to recover a total of \$389.87 for gas and \$702.63 for hydro. The landlord testified that the tenant also installed the family pack on the landlord's TELUS account and agreed to pay the additional charge for this service of \$120.96.

The landlord testified that the tenant caused damage to the fridge and stove. The landlord testified that the fridge was four years old; this was left with three missing shelves and a drawer. The handle was also broken off the outside of the door. The landlord testified that it would cost \$150.00 to replace the glass shelves and an undetermined amount to replace the drawer. The landlord replaced the entire fridge at a cost of \$548.00. This worked out cheaper than having a repair done to the fridge.

The landlord testified that the tenant also left the stove damaged; the glass on the outside of the door was broken and the bottom drawer was bent. To replace the glass and drawer would have cost \$300.00 for parts with an additional cost for labour. The landlord testified it was cheaper to buy a new stove then to repair the old one. The landlord testified the stove was three years old.

The landlord testified that the entire house was left in a dirty condition. The landlord referred to her photographic evidence showing children drawings all over the walls, the curtains were left dirty and stained, light fixtures were damaged, there were holes in the walls and light bulbs were missing. The children's drawings all had to be scrubbed off the walls and these had to be washed to remove grease and dirt. The holes in the walls had to be repaired and the walls had to then be repainted. The landlord testified that the unit had been freshly painted about six months prior to this tenancy starting in January, 2008. The landlord testified that the yard was also left untidy and unkempt, window frames and tracks were extremely dirty.

The landlord testified that they were going to contract out the cleaning and painting work but as this was very expensive the landlord and the landlord's husband did the work themselves. The landlord testified that they spent \$200.00 on paint and seeks to recover that cost. The landlord also seeks to recover costs for their labour to do all this work. The landlord testified that they spent every evening after work for two weeks cleaning and painting the unit for around 40 hours. The landlord seeks to recover \$800.00 for labour costs.

The landlord testified that she had originally claimed \$5,000.00 but reduced the claim as most of the work was done by the landlord and her husband to an amount of \$3,544.40. The landlord seeks an Order to keep the security deposit of \$375.00 to offset against the landlord's amended claim for damage, cleaning and unpaid utilities. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputed the landlord's claim. The tenant testified that she did not receive the utility bills from the landlord for the last year of her tenancy. The tenant testified that she asked the landlord on a number of occasions to provide the utility bills because the tenant was diligent about paying them. When the landlord did not provide the utility bills for the year the tenant assumed the landlord was not charging the tenant for utilities. The tenant disputed that she became hostile towards the landlord at the end of the tenancy. The tenant testified it was a stressful time with graduating, looking for a job, moving out and dealing with a burst pipe in the unit. The tenant testified that she had verbally told the landlord that the landlord could keep the tenant's security deposit; however, now the landlord is making the tenant responsible for these bills.

The tenant testified that regarding the TELUS bills; the tenant had no control over what was on the landlord's cable account. The tenant did not want or need cable but as the landlord had it going into her home she kindly agreed to put it into the tenant's unit. The tenant testified that she asked the landlord to inform the tenant if there was anything the landlord saw on the TELUS bill that the tenant's son put on the landlord's account. If this happened could the landlord block her son from putting things on the account and not authorise the tenant's son to add packages to the landlord's account. The landlord did not communicate anything to the tenant until the tenant found out her son had put the family package on the landlord's account. The tenant agreed to pay for that for the month and asked the landlord to remove it. The tenant testified if the landlord did not remove it or block the tenant's son from adding things to the landlord's account then the tenant cannot be held responsible for these charges.

The tenant agreed that the front of the stove was broken during move out. A table was being removed from the kitchen when the table broke the glass and damaged the door of the stove. The tenant disputed the landlord's claim that there were three shelves and a drawer missing from the fridge. The tenant testified that these were all in place at the end of the tenancy. The tenant agreed that the handle of the fridge had come off; however, testified that it just needed some screws and it could have been replaced.

The tenant disputed that the unit was left in a dirty condition. The tenant testified that the unit was not clean at the start of the tenancy. At the end of the tenancy the tenant engaged the services of cleaners to clean the unit for which the tenant paid \$150.00. The tenant agreed that her daughter had drawn all over the walls but disagreed that the unit was freshly painted six months before her tenancy started. The tenant testified that in 2010 the tenant had asked the landlord permission to paint the unit at the tenant's own expense. At that time the walls were stained and very dirty. The landlord never maintained the unit during the tenant's occupation.

The tenant testified that when her tenancy started many light bulbs were missing or burnt out and the light fixtures were old and ruined. The tenant agreed that the holes in the walls were made during her tenancy. The tenant testified that she paid \$200.00 to have garbage removed and this included some of the landlord's materials left in the unit when they had renovations done after the unit flooded. The tenant testified that she was not responsible for yard work as it is a strata property and yard work is done by the strata. The tenant agreed that she did clean up the toys in the yard after she was told to by the strata.

The landlord asked the tenant if the tenant had the family pack on the TELUS account and the Opra channel. The tenant responded that she never watched TV. The tenant recalled a conversation with the landlord as the tenant's son had ordered the family pack on the landlord's account and the tenant asked the landlord to block anything ordered from her son. The tenant testified that she does not know who gave her son authorisation to order the family pack on the landlord's account. The landlord asked the tenant when the landlord gave the tenant permission to paint the unit. The tenant

responded that the landlord gave her permission and said the tenant could paint as long as the tenant does not mess it up. The tenant testified that the landlord even came and looked at the tenant's painting.

The tenant asked the landlord if the unit had any mould and did the landlord do any maintenance in the unit. The landlord responded that there was no mould in the unit and maintenance was done if the tenant asked for it. The tenant asked the landlord about her testimony concerning the fridge shelves. The landlord responded that her video evidence shows there was only one shelf in the fridge and a drawer was missing. The tenant responded that her cleaner could testify that only one shelf was missing.

The landlord calls her husband as a witness. The landlord asked HN if he saw a mess left in the house and were there shelves and a drawer missing from the fridge. HM responded yes. The tenant declined to cross examine HM.

The tenant calls her witness AB. AB was a neighbour of the tenant. The tenant asked AB if she could explain the condition of the unit when the tenant came to live there and does AB recall the tenant painting the unit. AB responded that the appliances and cabinets were old when the tenant moved in and the unit had not been painted before the tenant moved in. the tenant painted the unit and it took the tenant a whole weekend to do so.

The landlord asked AB if AB remembers meeting many times with the landlord and mentioning the condition of the yard being full of toys and that BC Hydro could not get into the yard to read the meter. AB responded that they had mentioned to the landlord that the yard was a mess due to toys.

The tenant calls her witness RR. RR also lived close by. The tenant asked RR if RR can remember the condition of the unit when the tenant moved in. RR responded that there was an older fridge and kitchen cabinets were run down. The unit had not been painted and looked the same for some time. The tenant asked RR if RR remembers the tenant

painting the unit. RR responded that yes she did. RR testified that the tenant was responsible for the back yard but the landlord was responsible for its upkeep.

The landlord asked RR if RR remembers the strata meeting and it being said about the condition of the back yard. RR responded that it was mentioned about the toys in the back yard and that this needed to be cleaned up and it was the tenant's responsibility. The tenant did clean the toys up in the yard.

Analysis

With regard to the landlord's claim for unpaid utilities, the landlord testified that she did not intend to charge the tenant for utilities for the last year and did not therefore give the tenant copies of the utility bills. The landlord later changed her mind and has now provided the utility bills to the tenant and seeks to be reimbursed \$389.89 for gas; \$702.63 for hydro and \$120.96 for TELUS. The tenant argued that as the landlord did not provide the utility bills to the tenant when they came in, the tenant assumed the landlord was not going to charge the tenant. I have reviewed the evidence and testimony before me and find the landlord has sufficient evidence to show the gas and hydro bills are outstanding; however, I find the landlord has greatly jeopardized the tenant's ability to pay these bills by not providing them to the tenant with a written demand for payment within 30 days as specified under the *Act* each time the bills came in. As the landlord agreed that she did not intend to charge the tenant the bills in the last year and did not provide them to the tenant even after the tenant emailed the landlord a number of times asking for the utility bills, the tenant could be justified in thinking the landlord was not going to charge the tenant. A landlord is required to make a claim in a timely manner and I find it would be unreasonable for the landlord to now demand payment in full of these utilities because the landlord changed her mind about not charging the tenant for utilities during the last year of the tenancy. I therefore dismiss the landlord's application for gas, hydro and TELUS of \$1,213.46 without leave to reapply.

With regard to the landlord's claim for the new fridge and stove; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord testified that the fridge was four years old and the stove was three years old. Yet the tenant's witnesses both stated the appliances were old at the start of the tenancy and the landlord provided no evidence to show that these appliances had been replaced during the period of the tenancy in 2008. Furthermore, I am not satisfied from the evidence before me that the fridge had three missing shelves and a drawer. When the tenant contradicts the landlord's testimony and evidence the burden of proof falls to the landlord. The landlord may have removed shelving and a drawer from the fridge prior to taking the photographs as the move out inspection report does not indicate that shelves and a drawer are missing from the fridge.

The tenant testified that only one shelf was missing and all three drawers were in place. I find the landlord has insufficient evidence to support her claim that the fridge would therefore cost more to repair than to replace as there is insufficient evidence to show more than one glass shelf was missing and only screws were needed to replace the handle. Furthermore, the landlord has insufficient evidence to show what the cost of replacing a glass shelf would have been. The landlord must prove what steps were taken to mitigate any loss or damage; consequently I find the landlord's claim to replace the fridge is dismissed without leave to reapply.

With regard to the landlord's claim to replace the stove; I am satisfied from the undisputed evidence before me that the tenant or another person acting on behalf of the tenant did cause damage to the stove. This damage is significant and while the landlord has provided little evidence showing an estimate to repair the stove; I find the amount of damage would warrant a new stove being purchased. However, the landlord has testified that the stove was three years old, the tenant and the tenant's witnesses all testified that the appliances were old. The tenancy was six and a half years long and unless the stove was replaced during the tenancy, which no one attending testified happened, and then I must find that the stove was at least seven years old. The useful life of a stove is documented under the Residential Tenancy Policy Guidelines as 15 years; I therefore find I must deduct at least 50 percent from the landlord's claim for the stove of \$598.00 and find the landlord is entitled to recover the amount of **\$299.00** plus tax of **\$35.88**, plus **\$1.10** for delivery and **\$20.00** to take away the old stove.

With regard to the landlord's claim for cleaning the house and yard and repainting the unit; I am satisfied from the evidence presented that the unit was left in a dirty condition. The walls, flooring, window frames and tracks and other areas including the yard were not left in a reasonably clean condition as required under s. 32 of the *Act*. The tenant testified that she spent \$150.00 on cleaners but the move out report and the landlord photographic evidence shows areas of the unit were extremely dirty. The tenant's child had drawn all over the walls which also resulted in the landlord having to wash and repaint the walls.

While I am not satisfied from the evidence before me concerning when the landlord last repainted the unit had the tenant not left her child's drawings all over the walls then the landlords claim for repainting may have been declined. When the damage is clearly caused by the tenant or her children then I must find in favor of the landlord's claim. I have taken into consideration that the landlord and her husband did the cleaning and painting themselves to mitigate any loss to the tenant by using a more expensive contractor; however, when the landlord is making a claim for the cost of the paint of \$200.00 the landlord must provide evidence showing the actual amount incurred in purchasing the paint. As I have insufficient evidence to show the actual cost for the paint I must limit the landlords claim to **\$125.00** for paint.

The landlord has claimed a further \$800.00 for their labour and time for cleaning, repairs to the walls and painting. I am satisfied that the landlord had to clean the walls of the unit covered in the tenant's child's drawing and that this work alone would have taken considerable time. The yard also required a cleanup and although the tenant testified that she paid to remove garbage from the unit, some items remained that the landlord had to clear. Taking the amount of work to clean, repair and paint I find the landlords are entitled to recover some labour costs. The landlord testified that they worked for approximately 40 hours over a two week period; however, the landlord has insufficient evidence to show how many hours were actually put in doing this work so I have therefore limited the landlord's claim to an amount of **\$600.00**.

The landlord is entitled to keep the security deposit of **\$375.00 and accrued interest of \$5.91** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlord's monetary claim.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord as follows:

Stove replacement costs	\$355.98
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Paint	\$125.00
Labour costs	\$600.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$380.91)
Total amount due to the landlord	\$750.07

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$750.07**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 07, 2015

Residential Tenancy Branch

