



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The parties confirmed the landlord served her Application for Dispute Resolution by registered mail. I find that the tenant is served with the Application according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid utilities and damages; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the tenant owes for unpaid utilities and that they damaged the property, that it was beyond reasonable wear and tear and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. They confirmed that the tenancy commenced in July 2012, that monthly rent was \$1350 and a security deposit of \$600 was paid. The tenants vacated on December 31, 2016 and recovered twice their security deposit in a hearing in September 2016. They are trying to enforce payment through Small Claims Court of the \$1300 awarded to them.

The landlords said that the tenants owed utilities when they left. They were shared utilities and the landlord claims \$84.80 for BC Hydro and \$198.80 for gas which was their portion. The tenant agrees she owes this although she thought the total was \$260. The utility bills are in evidence.

The landlord claims for damages as follows:

1. \$120 for cleaning. She said she did it herself but had one bill for carpet

cleaning which she forgot to submit. The tenant denies they left the house dirty. They said they hired people to clean but provided no invoices to support their assertion. The landlord provided some photographs and pointed especially to a dirty oven and microwave. The tenant supplied a DVD showing a tour of the home. The landlord pointed out that they did not show the dirty areas or damaged areas in the video. She said the new tenant thought the unit was not livable due to the dirty microwave and other areas.

2. \$320 to repair cupboards in the kitchen. She said the tenants used a rice cooker at the cupboards and damaged them with the steam. The tenants deny doing any damage. The landlord said she got an estimate to repair but there was a new tenant in place and she could not do the repair. The tenants pointed out the inconsistency between this statement and the landlord's statement that the new tenant thought the place was unlivable.
3. \$90 to change 3 locks. The tenants said they returned the keys with the letter in the mailbox. The landlord said she saw the letter but no keys.

There are no condition inspection reports in evidence and no invoices. The landlord said she lived there herself until 2012 and she did not keep evidence of the condition at move-in. She provided photographs of alleged damages at the end of the tenancy and the tenant provided a DVD of a tour of the premises after cleaning at the end of the tenancy. They pointed out the landlord's photographs were taken on January 6, 2017 after a new tenant was in place so this did not show how they left it. They allege their video is more representative of the condition at move-out. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

I find that there are utility arrears for BC Hydro of \$84.80 and \$198.80 for gas. The tenant confirmed their responsibility for these amounts so I find the landlord entitled to compensation for the utility arrears.

Regarding the claim for damages, I find awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find insufficient evidence that the tenant left the unit in an unclean condition. While the landlord refers specifically to the microwave and oven, I find insufficient evidence that these appliances were clean at move in. A condition inspection report done at move-in and move-out can provide valuable evidence as to damages caused by tenants. In this case, no condition inspection reports were done so there is no evidence of the pre-existing condition of the unit. I find the tenant's evidence credible that they left the unit in a clean and tidy condition as their credibility is supported by the video of a walk through at the end of the tenancy. I found the unit was shown as clean and tidy. I found it clear and well lighted contrary to the landlord's allegations that it was done in dim lighting.

In respect to the damage claimed to be done to the kitchen cabinets, I find insufficient evidence of the damage or that it was done by the tenants. I also find it improbable that the landlord did not find the keys left by the tenants as she agreed she found their letter in the mailbox. I find tenants are not responsible for rekeying locks for new tenants if they return their keys according to the Act section 35. It appears in the evidence that many tenants moved into and out of the home and these tenants said the other tenants paid security deposits to the landlord, then got them back when they returned the keys. I find insufficient evidence to prove that the tenants did not return the keys. There is no invoice for the cost. In summary, I dismiss the claim of the landlord for damages due to insufficient evidence that the tenants caused the damage and insufficient evidence as to cost of the loss.

Conclusion:

I find the landlord is entitled to a monetary order for unpaid utilities as calculated below and to recover filing fees paid for this application. I dismiss the claim of the landlord for damages without leave to reapply.

Calculation of Monetary Award:

BC Hydro –tenant share	84.80
Gas- tenant share	198.80
Filing fee	100.00
Total Monetary Order to Landlord	383.60

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 16, 2017

Residential Tenancy Branch