



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF, O
 MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for money paid to the landlord for damages and recovery of lost wages?

Background and Evidence

The landlord testified that this fixed term tenancy began on April 1, 2013 and reverted to a month-to-month tenancy after March 31, 2014. A copy of the tenancy agreement has been provided as evidence for this hearing, which names 2 tenants, and the

landlord testified that the tenants are brothers. The tenancy ultimately ended on November 23, 2016. Rent in the amount of \$900.00 per month was originally payable and was increased to \$925.00 per month during the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00, all of which has been returned to the tenants. The rental unit is a 2 bedroom basement suite and the landlord resided in the upper level of the home. The whole house was brand new at the beginning of the tenancy.

The landlord further testified that move-in and move-out condition inspection reports were completed by the parties, and copies have been provided as evidence for this hearing. After the move-out condition inspection report was completed, the landlord noticed damages in the rental unit. The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$163.69 for appliance repair and assessment;
- \$518.07 to replace carpeting;
- \$122.85 for installation of new carpeting;
- \$172.51 to replace a broken bedroom door and door handle for another bedroom; and
- \$75.00 for labor costs to install the door and handle.

At the end of the tenancy the seal on the oven door was torn and wasn't noticed because in order to see it, one would have to open the oven door completely, which was not done during the move-out condition inspection. The oven was clean, and that's all that was assessed at that time. Also, the washing machine was assessed by the technician and found to have scum from laundry detergent in it due to overloading. The landlord was able to repair the washing machine herself after the assessment by the technician. All appliances were brand new at the beginning of the tenancy.

The carpet had a large, dark stain, which is noted in the move-out condition inspection report.

During the tenancy one of the bedroom doors was broken, and the landlord had to purchase another. The door handle on the other bedroom door had been changed to a locking unit, and the tenants didn't leave the original door handle, so the landlord had to purchase another regular door handle, and hired someone to install the door and the door handle.

The landlord sent a bill to the tenants and one of the tenants paid half of the costs on that bill. The other tenant has not paid any amount and the landlord's claim is for the other half of the amounts. The Monetary Order Worksheet sets out half of the costs

only because the other half has been paid, and recovery of the \$100.00 filing fee. Receipts and photographs have been provided as evidence for this hearing, and the landlord testified that the photographs were taken sometime in December, 2016. The rental unit is now occupied by the landlord's daughter who moved in on December 30, 2016.

The landlord sued the tenant in Small Claims court, but the Court dismissed the claim.

The tenant testified that the move-out condition inspection report was signed off by the parties on November 23, 2016 however the tenants actually vacated the rental unit on November 12, 2016. The landlord seemed positive during the inspection and gave back the security deposit.

On December 29, 2016 the landlord sent the tenants a bill for \$2,104.24 in the mail, but there had been no conversation about damages prior. The tenant contacted the Residential Tenancy Branch and was told that since the report was signed off, the tenants didn't have to pay. The tenant went to see the landlord and told her that, but his brother panicked and paid half of the bill. The landlord replied that she might sue in Small Claims Court, and she did.

The parties were in Court the first time on April 26, 2017 for a Settlement Conference. The dispute didn't settle, and the parties returned to Court on June 23, 2017. The tenant missed 2 days of work, and claims lost wages as against the landlord. At the time of the first hearing the tenant was earning \$26.74 per hour working from 7:00 a.m. to 3:30 p.m. Monday through Friday, and missed 7 hours of work. At the time of the second hearing the tenant was working in a different location earning \$26.47 per hour, and the shifts were the same. On that occasion, the tenant had to miss a full day of work. Copies of pay stubs have been provided as evidence for this hearing. The tenant testified that the result of the Small Claims hearing was a dismissal for lack of jurisdiction.

Section Z of the move-out condition inspection report states: "Damage to rental unit or residential property for which the tenant is responsible:" which has been left blank.

The tenant claims back from the landlord the \$1,052.12 that his brother paid to the landlord as well as \$398.82 for loss of wages, and recovery of the \$100.00 filing fee.

Analysis

Firstly, in order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

With respect to the landlord's claim, the *Residential Tenancy Act* states that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, which would satisfy mitigation. That means that care must be taken to ensure the information on the report is correct. It does not suffice to go over the rental unit a second time and make a claim for damages that do not appear on the report.

I have reviewed the move-in and move-out condition inspection reports, and the only damage noted is a stain on the living room carpet at move-out. The tenant relies on Section Z of the report which doesn't mention any damages for which the tenants are responsible. I agree. Further, the report is signed by the tenant indicating that the tenant agreed with the report, which may not have been the case if the landlord had filled in Section Z.

In the circumstances, I am not satisfied that the landlord has established element 4 in the test for damages, and the landlord's application is dismissed.

With respect to the tenant's claim, the tenant has not paid any part of the landlord's bill and therefore the landlord is not indebted to the tenant.

With respect to the tenant's claim for loss of wages, I have reviewed the pay stubs provided, and I find that the landlord caused the tenant to lose work by attending a Court proceeding that could not be dealt with in the Provincial Court of British Columbia, Small Claims Division. The *Residential Tenancy Act* specifies that disputes between a landlord and a tenant in respect of a residential tenancy must be heard by the Residential Tenancy Branch. I find that the tenant has established a claim of \$398.82 for lost wages.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$498.82.

This order is final and binding and may be enforced.

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: December 21, 2017

Residential Tenancy Branch