



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FF

Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 12, 2023 by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

One of the named landlords attended the hearing, gave affirmed testimony, provided evidentiary material in advance of the hearing, and represented the other named landlord. The tenant also joined the call at 1:42 p.m. prior to hearing any of the landlord's testimony. The tenant also gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all of the landlord's evidence has been provided to the tenant, all of which has been reviewed and is considered in this Decision. The tenant has not provided any evidentiary material.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*,

regulation or tenancy agreement, and more specifically for recovery of the cost of serving documents and overdue utilities?

Background and Evidence

The landlord testified that this fixed term tenancy began on August 1, 2020 and reverted to a month-to-month tenancy after July 31, 2021. The landlord does not know when the tenant vacated the rental unit, however the move-out condition inspection was completed on April 30, 2022, and a copy has been provided for this hearing. Rent in the amount of \$1,950.00 was originally payable on the 1st day of each month, which was increased during the tenancy to \$1,979.00. On July 8, 2020 the landlords collected a security deposit from the tenant in the amount of \$975.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is the upper level of a house, with a basement suite that is also tenanted. A copy of the tenancy agreement has also been provided for this hearing.

The landlord further testified that the tenant only paid \$989.50, being half of the rent for the month of April, 2022. On April 19, 2022 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated April 19, 2022 and contains an effective date of vacancy of April 15, 2022 for unpaid rent in the amount of \$989.50 that was due on April 1, 2022. The landlords claim the other half of April's rent, being \$989.50.

The landlords have also provided a Monetary Order Worksheet setting out the following claims, totaling \$2,471.72:

1. \$50.00 for snow removal;
2. \$838.75 for house repairs;
3. \$682.50 for damage caused by a hot tub;
4. \$140.00 for cleaning the house;
5. \$118.44 for screen replacement;
6. \$576.08 for Fortis utilities;
7. \$52.36 for light bulbs; and
8. \$13.59 for serving documents by Canada Post.

The landlord testified that the tenant had a contract with a neighbour for snow removal and the bill was not paid. The neighbour couldn't contact the tenant, so the landlord paid the invoice of \$50.00, a copy of which has been provided for this hearing.

The tenant's cat had damaged multiple window screens, and scratched walls. Also a door handle was missing, and the ice maker stop arm from the refrigerator was broken off. The door hinges were broken off the master bedroom, and a large hook on the wall in a closet was torn off.

The tenant put a hot tub in the yard and the chemicals stained the stamped concrete. Quotes for repairs have been provided for this hearing and the landlords claim \$682.50 for the damage caused by the hot tub. Also, screw holes or other casings for wire had to be removed.

The tenant didn't clean the rental unit, but left walls and blinds dirty, food spatter on the ceiling, and the flooring under the oven and fridge were extremely dirty. Handfuls of dirt remained under vent covers for the forced air heating at the end of the tenancy.

The screens that were damaged were in both bathrooms, and light bulbs were burned out.

The landlords re-rented for May 1, 2022.

The photographs provided by the landlord for this hearing were taken on April 30, 2022 during the move-out inspection, and of the concrete at a later date.

The tenant has not served the landlords with an Application claiming the security deposit, and the tenant provided a forwarding address on the move-out condition inspection report dated April 30, 2022.

The landlord has also recently learned that the water bill of \$220.45 is outstanding, and with interest the amount is \$221.89 as of today. The hydro bill also has late fees. A copy of the hydro bill has been provided for this hearing.

The tenant testified that she gave the landlords notice to end the tenancy on March 15, 2022 effective April 15, 2022, believing that 30 days notice was required, regardless of the date the notice is given. The tenant paid half of the rent for April of \$989.50 and left at the end of March.

The parties participated in a condition inspection on April 20, 2022 and the landlord told the tenant what needed to be done, so the tenant went back and completed it, but the landlord didn't do another inspection. The tenant patched the holes and got the unit ready to be painted. The tenant hired cleaners to do the cleaning. The tenant does not have a cat or any pet, but the tenant downstairs had a cat. The tenant's dad had a dog

which was at the rental unit for a time, but the landlords denied the tenant keeping it so it went elsewhere.

The hook in the closet was not installed by the tenant but the tenant patched the hole.

The tenant didn't receive any notice about outstanding snow removal invoice, and didn't keep tabs on what was done or owed.

The utilities were paid up to date. Hydro is in the landlords' name, and the tenant didn't receive any notice of what was unpaid. The water bill is in the tenant's name. During the tenancy the landlord would text the amounts owed and the tenant would pay that amount.

SUBMISSIONS OF THE LANDLORD:

The information provided for this hearing makes a clear picture of the damage. Photographs were taken after or during the move-out condition inspection. The rental unit was not left clean or in repaired condition. The tenant signed the move-out condition inspection report and was aware of all the items damaged.

SUBMISSIONS OF THE TENANT:

The move-out condition inspection was done on April 20, 2022 and the landlord told the tenant what needed to be done, so the tenant went back and did it. The tenant was not given the opportunity to be there for the final inspection.

Analysis

Firstly, with respect to the claim for unpaid rent, the *Residential Tenancy Act* requires that a tenant's notice to end a tenancy must be given before the date rent is payable and must not be effective earlier than the end of the periodic tenancy.

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In other words, since the tenancy reverted to a month-to-month, or periodic tenancy, and since rent is payable on the 1st day of the month, the tenant was required to give notice to end the tenancy prior to that, but was responsible for the rent to the end of April. The tenant testified that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities effective April 15, 2022, but that does not relieve the tenant of the responsibility to pay rent for the month. The parties agree that the tenant paid half the rent for April, and I find that the landlords are entitled to the other half, or \$989.50.

Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the claiming party has suffered a loss;
2. that the loss suffered is 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 any damage or loss suffered.

The law also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit when the tenancy starts and when it ends. I have reviewed the reports and the photographs provided by the landlords. The tenant testified that the inspection was completed on April 20 and the tenant was not given an opportunity to do another after the landlord told the tenant what needed to be done. The tenant also testified that a cleaner was hired. However, the tenant has not provided any evidence to substantiate that, while I have evidence from the landlords showing that the move-out condition inspection report was completed by the parties on April 30, 2022 and it is signed by the tenant, and photographs from the landlord.

With respect to the claim for house repairs, I have reviewed the Quotation dated May 2, 2022 which states: "Labour to perform the following: repair and spot roll; living room wall and closet; repair and paint 3 walls in kid's bedroom, supply and replace door knob to master bedroom." I have also reviewed the video and photographs provided by the landlords. The move-in portion of the report is signed by a landlord and a tenant wherein the only repair required is a fence. It shows that the tenant agreed that the report fairly represented the condition of the rental unit. It is also signed by a landlord and a tenant at move-out, and is dated April 30, 2022, but the section to agree or not agree with the report is not checked off by the tenant. The move out portion shows that the rental unit was unclean at the end of the tenancy and shows that the screens were damaged in the 2 bathrooms, a hook was broken off a wall, the hinge and door handle

were missing. There is no mention in the report of painting required on 3 walls in the kid's bedroom or that painting was required in the living room. Further, there is no separation for the amounts the quote shows for painting and to replace the door knob. As a result, I am not satisfied that the landlords have established the claim for the invoice, and I dismiss that portion of the application.

In the evidence I am satisfied that the landlords have established claims of \$50.00 for snow removal, \$576.08 for the hydro bill, and \$140.00 for cleaning.

The landlord also testified that a water bill remains outstanding, however the tenancy ended on April 30, 2022, and a copy of the water bill has not been provided for this hearing, and I decline to order that the tenant repay the landlords for that bill.

I accept the undisputed testimony of the tenant that she did not have a cat, but the tenants in the lower level did have a cat. Therefore, I am not satisfied that the landlords have established that the tenant is responsible for the damaged screens, and I dismiss that portion of the landlords' application.

With respect to the claim for damage to the stamped concrete caused by the tenant's hot tub, I have reviewed the photograph and the invoice dated May 3, 2022 (03/05/2022) which contains a description of "repair discoloured surface of stamped concrete pool deck where a hot tub was sitting," and wash and seal. The hot tub damage is mentioned in the move-out condition inspection report, and I am satisfied that the landlords have established the \$682.50 claim.

With respect to burned out bulbs, I note that a bulb was missing at the beginning of the tenancy in the main bathroom, and one burned out at the exterior of the home at the end of the tenancy. The evidence does not include any receipts for replacing light bulbs and therefore, I find that the landlords have not satisfied element 3 in the test for damages, and I dismiss that portion of the application.

The *Residential Tenancy Act* provides for recovery of a filing fee, which is normally granted where an applicant is successful, but there is no provision for the cost of serving documents or providing evidence. Therefore, I dismiss the landlords' application for recovery of Canada Post costs of \$13.59. However, since the landlords have been partially successful with the application, the landlords are entitled to recovery of the \$100.00 filing fee.

In summary, I find that the landlords have established claims of **\$989.50** for unpaid rent; **\$50.00** for snow removal, **\$576.08** for the hydro bill, **\$140.00** for cleaning, **\$682.50** for

damage caused by the tenant's hot tub, and **\$100.00** for the filing fee, for a total of **\$2,538.08**.

The landlords have also requested to keep the security deposit. The landlords made the application on May 2, 2022 and received the tenant's forwarding address in writing on April 30, 2022, which is within the 15 days required by law. I order that the landlords may keep the \$975.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlords for the difference, in the amount of **\$1,563.08**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$975.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,563.08**.

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: January 13, 2023

Residential Tenancy Branch