



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid utilities, for damages to the rental unit, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit and pet damage deposit.

Issue(s) to be Decided

1. Are there arrears of utilities and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit or pet damage deposit?

Background and Evidence

This tenancy started on August 15, 2006 and ended on November 30, 2008. Rent was \$800.00 per month. The Tenant paid a security deposit of \$400.00 and a pet damage deposit of \$300.00 on or about August 23, 2006. The Landlord purchased the rental property on June 29, 2007 and entered into a tenancy agreement with the Tenant on July 15, 2007 for a one year period commencing September 1, 2007 (and month to month thereafter). The Landlord claims that under the tenancy agreement, gas and water are not included in the rent. The Landlord also claims that the Tenant is responsible for 3/16 of the gas and water bills for the rental property but has not paid for the period, September 1, 2007 to November 30, 2008.

The Tenant argued that she was told by the new Landlord that the tenancy agreement would be on the same terms as her previous tenancy agreement with the old Landlord (in which gas and water were included in the rent). The Tenant said the reason gas was not included in her rent was because her rental unit could not be heated adequately by the gas furnace in the rental property. The Tenant said she brought this to the Landlord's attention as early as July, 2007 and again in an e-mail in December, 2007. The Landlord however, would only agree to provide her with a space heater. The Tenant also argued that the Landlord had not raised the issue of her paying gas and water until July, 2008 after the Tenant sought to recover overpayments of hydro from the Landlord.

The Landlord and Tenant did a move out inspection of the rental unit on November 30, 2008, however, the Landlord did not complete the inspection report until December 4, 2008 and sent a copy of it to the Tenant to sign. The Tenant refused to sign the report. The Landlord claimed some general cleaning was required which was done by the new tenant at a cost of \$82.69 as well as carpet cleaning at a cost of \$58.87. In support, the Landlord provided copies of photographs taken by the property manager (in the absence of the Tenant) on December 1, 2008.

The Tenant argued that she left the rental unit reasonably clean at the end of the tenancy and relied on copies of photographs she took of the rental unit on November 30, 2008 (in the absence of the Landlord). The Tenant disagreed that the sinks and appliance the Landlord claimed needed cleaning were dirty but argued they showed signs of wear and tear. The Tenant disputed the cost of general cleaning; she claimed that the cleaning invoice provided by the new tenant was fraudulent in that the provider of the service was the new tenant's business associate. The Tenant admitted that the carpets had not been cleaned at the end of the tenancy but argued that they were old and worn at the beginning of the tenancy.

The Landlord claimed that the Tenant removed a light fixture from the rental unit at the end of the tenancy and as a result, the new tenant installed a new light fixture at a cost to the Landlord of \$88.46. The Tenant claimed she removed a ceiling fan at the beginning of the tenancy and replaced it with a light fixture. At the end of the tenancy, the Tenant removed the light fixture and said she asked the new tenant (in the presence of the Landlord) if he wanted the ceiling fan reinstalled however, he declined as he wanted to install a light fixture instead. The Tenant said she left the ceiling fan in the rental unit.

The Landlord also claimed that the Tenant contacted the new tenant and his business associate a number of times about the cleaning and repairs expenses they forwarded to the Landlord. The Landlord claimed the new tenant was concerned about the Tenant coming around and therefore asked the Landlord to repair one door knob and to replace the lock. The Tenant argued that she returned her keys to the Landlord and that the Landlord had the financial obligation to change locks at the request of a new tenant after a tenancy has ended.

The Landlord sought to recover legal expenses due to the Tenant's unwillingness to negotiate a settlement of this matter. The Tenant argued that she was under no obligation to settle with the Landlord who had made an offer she considered unreasonable.

Analysis

Although the Tenant argued that the terms of the tenancy agreement were to be the same as the tenancy agreement with her previous landlord, this is contradicted by the written agreement which she signed. While it was unreasonable for the Landlord not to collect payment for water and gas for almost a year, it does not change the fact that under the Parties' tenancy agreement dated September 1, 2007, gas and water were not included in the rent. The Tenant did not dispute that 3/16 of the bills would be representative of her share of those bills if she was responsible for them. Consequently, I find the Landlord is entitled to recover **\$710.91** for unpaid utilities. Although the Tenant argued there was no intention she pay for gas because the gas furnace in the rental property could not adequately heat the rental unit, this is a matter for which the Tenant would have to apply for compensation which was not before me.

Section 37 of the Act says that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Landlord provided a copy of a condition inspection report prepared on December 4, 2008. I find that the report does not comply with s. 20 of the Regulations to the Act with respect to the standard information that must be contained in it. As a result, I find the Landlord's move out condition inspection report is unreliable and give it little weight.

The Tenant did not dispute the Landlord's photographs of the bathroom sink and oven, but argued instead that the damage in question was from wear and tear. With all due respect, I disagree. There is nothing in the move in condition inspection report about pre-existing damage to these items. Notwithstanding rust on the stove top, it is clear the oven and stove and bathroom sink show signs of normal use that has not been cleaned. I find it reasonable that the new tenant would have had to clean the oven and stove and sink and estimate that it would have taken approximately 2 hours to do so. Consequently, I award the Landlord **\$30.00** in compensation of this expense. I find that there is insufficient evidence to support the Landlord's other general cleaning expenses and conclude that in other respects, the Tenant left the rental unit reasonably clean.

The tenancy agreement does not have a clause requiring the Tenant to clean the carpets at the end of the tenancy. However, RTB Policy Guideline #1, states at p. 2 that a tenant is responsible (under s. 32(2) of the Act) for cleaning carpets after a tenancy of one year. The Tenant admitted she did not clean the carpets but argued that there was no evidence the new tenant or Landlord had incurred an expense for carpet cleaning. In the absence of proof of payment, I find there is insufficient evidence of this expense and this part of the Landlord's claim is dismissed.

The Tenant correctly noted that s. 25 of the Act places the financial responsibility of changing or re-keying locks after a tenancy has ended on the Landlord. Furthermore, there is no evidence that the Tenant damaged the door knob in question. Consequently, this part of the Landlord's claim is dismissed. I also accept the undisputed evidence of the Tenant that she left the original ceiling fan in the rental unit

disconnected at the request of the new tenant and as a result, I find there are no grounds for the Landlord's claim for installing a new light fixture.

The Landlord also sought to recover legal fees which he claimed were incurred because the Tenant refused to come to a settlement. I find however, that the Tenant's argument regarding payment of utilities had merit and that it was not unreasonable for her to take the position she did especially when the Landlord did not try to collect utilities for almost a year. While the Act does permit a party to be compensated for another's breach of the Act or tenancy agreement, it does not provide for the payment of a penalty or solicitor's costs where one party has failed to accept an offer to settle (as do the Provincial Small Claims Court Rules and Supreme Court Rules, respectively).

Furthermore, I find that the Landlord's claim of \$1,500.00 in legal fees for the purpose of recovering \$710.00 in unpaid utilities is unreasonable and contrary to the duty to mitigate under s. 7 of the Act. There was no evidence as to why the Landlord would otherwise need to incur legal fees especially given that the issues in this matter were not complicated. Consequently, this part of the Landlord's claim is dismissed, however, the Landlord is entitled to recover its **\$50.00** filing fee for this proceeding.

Section 36 of the Act says that if a Landlord fails to complete a condition inspection report in accordance with the Regulations to the Act, the Landlord's right to offset damages to the rental unit from the security deposit is extinguished. Under s. 38(4), of the Act however, a Landlord still may apply a security deposit and pet damage deposit against utility arrears and filing fees. Consequently, I order the Landlord to keep the Tenant's security deposit plus accrued interest in partial payment of the award for unpaid utilities and the filing fee. The Landlord will receive a monetary order for the balance owing as follows:

Unpaid utilities:	\$710.91
General Cleaning:	\$30.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$790.91
Less: Security Deposit:	(\$700.00)
Accrued interest:	<u>(\$22.48)</u>
TOTAL OWING:	\$68.43

Conclusion

A Monetary Order in the amount of **\$68.43** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.