

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied March 16, 2009 for a Monetary Order for damage to the unit, for unpaid rent, to keep all of the security deposit, and to recover the filing fee for their application. The tenant applied April 14, 2009, for a Monetary Order to recover double the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail.

Service of the hearing documents by the tenant to the landlord was done in accordance with section 89 of the *Act*, sent via registered mail on April 17, 2009.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid utilities, for damage caused to the rental unit, to retain the damage deposit in partial satisfaction of their claim, and to recover the cost of the filing fee
- Whether the tenant is entitled to a Monetary Order under section 38 of the *Act* for double the security deposit

Background and Evidence

The tenancy began as a fixed term tenancy on February 01, 2007 which switched to a month to month tenancy one year later. Rent of \$1,554.00 was payable on the first of each month. The tenant paid a security deposit of \$750.00 on January 12, 2007.

The rental unit is a house built in 1974, had a complete kitchen renovation in 2005, new appliances in 2005, all of the upper floor hardwood was sanded and refinished in 2005, laminate installed in the basement in 2005, and painted through out in 2006 except for the main bathroom and laundry room.

The landlord testified that they made special arrangements to fly into town to conduct the move out inspection for the tenant, as she had requested, on the last day of the tenancy. When the landlord arrived he stated that the tenant was loading up her possessions and he told her that he was going in to conduct the inspection and that she did not come into the home to walk through with him. The landlord testified that he did not discuss the condition of the home with the tenant at that time because he did not want to have a confrontation with her.

The landlord stated that the tenant gave him her forwarding address after he had completed the move out inspection on February 28, 2009.

The landlords testified that they did not apply for dispute resolution earlier as they did not come back to town until the following weekend which is when they tried to acquire repair quotes for the damages that were done to the rental unit. The landlord stated that the fifteenth day was a Sunday and so they filed their application on the Monday, the sixteenth day.

The landlord submitted into evidence a completed move-in and move-out inspection report. The male landlord testified that he completed the move-in inspection check list at the same time he wrote in the move out inspection items and that the tenant was not

present with him when he completed this form. The landlord stated that this was their first time being a landlord and he wasn't aware of the requirement for inspections at the time the tenant moved into the rental unit.

The landlord stated that someone had gained access to the garage after the tenant moved out and put old planter pots and a broken lawnmower into the garage.

The landlord testified that the repairs have not been completed on the flooring, the bathroom window, and most of the outside work due to winter weather conditions.

The landlord advised that the unit has been re-rented effective May 1, 2009.

The tenant testified that during her tenancy she dealt with the Maintenance person with issues relating to the house, and only dealt with the landlords when it came to paying the rent.

The tenant confirmed that she was aware that the landlord was conducting a walk through inspection when he arrived at the rental unit on February 28, 2009 and that she chose not to go in with him during the walk through as she was busy loading up her possessions. She stated that she left and took a load to the landfill and returned to load up more possessions and the landlord never commented about the condition of the house. The tenant stated that she had a discussion with the landlord about the cleaning supplies she had left in the house and the landlord just asked her to remove them and never said anything to her about the condition the house was left in.

The tenant stated that she didn't request a move-in inspection report nor did she request a copy of the move-out inspection.

The tenant testified that she worked out of town during the months of December and January, which she returned many weekends and times throughout the month, but that she was primarily responsible for the rental unit.

The tenant testified that she was aware that the rental unit needed cleaning, but that because the landlord didn't say anything to her about it when he did the move-out inspection she felt she should not be responsible for the cost of cleaning the unit.

The tenant testified that she was aware of the damage caused by the pet rabbit, the felt pen writing on the laminate flooring, the broken sink stopper, the missing stopper from the bathroom sink, the missing batteries from the smoke detector, the pieces of wood put up around the bathroom sink for small shelves, the broken bathroom vanity drawer, the appliances and furniture left for the landlord to remove, and the broken fence.

The tenant testified that she was not aware of the stains and wipe marks on the ceiling, the damage to the hardwood flooring, cat feces left in the bedroom, broken bathroom window, and broken railing.

The landlords are requesting to be reimbursed for all of the cleaning, waste removal, and the costs to repair the damages.

The tenant testified that she agreed to be responsible for the costs to repair the damages caused by the rabbit but that she felt she should not be responsible for any other cleaning costs or damages.

Analysis

In regards to an Applicant's right to claim damages from the Respondent, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under sections 33 and 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act*

and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 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 tenant to prove that the landlord was in contravention of the *Act* in not getting her a copy of the move out inspection report and by not filing a claim against the security deposit within the required time frames. Based on the verbal testimony and documentary evidence I find that the landlord complied with the *Act* in scheduling the move out inspection, and that in fact it was the tenant who contravened the *Act* by choosing not to attend the walk through with the landlord at the predetermined time, and that the tenant refused the landlord's offer to have a copy of the move out inspection report couriered to her. Based on the above I dismiss the tenant's application for double the security deposit, without leave to reapply and will consider the landlord's monetary claim against the security deposit.

With respect to the landlord's claim for unpaid rent for August 2007, in the absence of proof I dismiss the landlord's claim without leave to reapply.

In regards to the landlord's monetary claim for damages the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a

violation of the agreement or a contravention of the *Act* on the part of the tenant. Section 37 of the *Residential Tenancy Act* stipulates that the tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends, and that the rental unit must be reasonably clean, and undamaged except for reasonable wear and tear at this time.

Based on the verbal testimony, the tenant took responsibility for the rental unit, was aware that the rental unit was not cleaned prior to the predetermined move-out inspection time and that the rental unit had suffered damage. I found that the tenant thought she escaped responsibility for the cost of the cleaning and damages because she didn't take part in the move-out inspection and did not sign or receive a copy of the form.

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out without a breach and the onus is on the applicant to prove the actual cost to replace or repair the loss. Submitting quotes for work that has not been performed or a quote that involves an entire floor repair when only a portion is damaged does not constitute actual cost to replace or repair a loss, nor does submitting typed statements without dates, actual labor and material costs.

Section 25 of the *Act* stipulates that the landlord pay all costs associated with the changes of locks or altering the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit. Based on the foregoing I dismiss the landlord's claim for locksmith fees without leave to reapply.

The tenant has accepted responsibility for the costs to repair the damage caused by the rabbit, however given the spring weather conditions the landlord has not been able to complete the repairs directly related to rabbit damage. I dismiss the landlord's claim to repair damages caused by the rabbit with leave to re-apply.

I find that the landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, and that the landlord is entitled to recover the filing fee from the tenant as follows:

Landfill Costs – City of Kelowna 3 x \$6	\$18.00
Walmart – Light bulbs and batteries (\$6.69 + \$16.02)	22.71
Home Depot – gasket, bulbs, strainer, paper holder (\$29.63 & \$36.34)	65.97
Cleaning Costs – Allowed at \$15.00 per hour x 6 hours	90.00
Filing fee	100.00
Sub total (Monetary Order in favor of the landlords)	\$296.68
Offset against Security Deposit \$750.00 plus Interest of \$22.33	-772.33
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$475.65

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim in the amount of \$296.68 to be offset against the tenant's security deposit with a balance of **\$475.65 payable to the tenant immediately upon receipt of this decision.**

The balance due to the tenant is to be paid immediately and not held in abeyance for any future claims that may be made by the landlord in relation to costs to repair outside damages caused by the rabbit.

A copy of the tenant's decision will be accompanied by a Monetary Order for \$475.65. The order must be served on the landlord and is enforceable through the Provincial Court.

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 28, 2009.

Dispute Resolution Officer