



Dispute Resolution Services

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

Decision

Dispute Codes:

MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to ask questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit; for a monetary order for loss of revenue for the month of December; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2008; that the Tenant was required to pay monthly rent of \$1,500.00; that the Tenant paid a security deposit of \$750.00 on, or about, February 01, 2008; and that the Tenant did not provided the Landlord with a forwarding address at the end of the tenancy. The parties agree that on November 28th or 29th, the Tenant verbally advised the Landlord of their intent to vacate the rental unit on November 30, 2008.

The Landlord is seeking compensation, in the amount of \$1,500.00, for loss of revenue for the month of December. He stated that he was unable to rent the rental unit for

December due to the fact that the Tenant vacated the rental unit with minimal notice. He stated that he did find new tenants for January of 2009. He stated they moved into the rental unit a few days early, but they did not pay rent for the month of December.

The Landlord is seeking compensation, in the amount of \$5,500.00, for repairing damage to the interior walls and for re-painting the interior walls. The Tenant admitted to damaging the walls, although she believes the compensation claim is excessive for the amount of repairs that are required. The Tenant offered to compensate the Landlord, in the amount of \$800.00, for the damage done to the doors and the frames, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$450.00, for damage to three interior doors and door frames. The Tenant admitted to damaging two doors and door frames, but denies damaging the third door. The Tenant offered to compensate the Landlord, in the amount of \$300.00, for the damage done to the doors and the frames, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$500.00, for dents on the fridge. The Tenant admitted to causing some damage to the fridge, although she believes the compensation claim is excessive for the amount of damage done to the fridge. The Tenant offered to compensate the Landlord, in the amount of \$125.00, for the damage done to the fridge, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$1,000.00, for damage to the hardwood floor. The Tenant admitted to causing some damage to the floor, although she believes the compensation claim is excessive for the amount of damage done to the floor. The Tenant offered to compensate the Landlord, in the amount of \$300.00, for the damage done to the fridge, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$600.00, to replace one missing blind and to repair two damages blinds. The Tenant admitted to damaging two blinds and to removing one blind, although she believes the compensation claim is excessive. The Tenant offered to compensate the Landlord, in the amount of \$300.00, to repair and replace the blinds, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$1,000.00, to repair pantry doors that were damaged when they were placed outside in the weather. The Tenant admitted to damaging the pantry doors, although she believes the compensation claim is excessive for the amount of damage caused. The Tenant offered to compensate the Landlord, in the amount of \$300.00, to repair the pantry doors, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$500.00, to repair closet doors that were damaged when they were placed outside in the weather. The Tenant admitted to damaging the doors, although she believes the compensation claim is

excessive for the amount of damage caused. The Tenant offered to compensate the Landlord, in the amount of \$100.00, to repair the closet doors, and the Landlord accepted her offer.

The Landlord is seeking compensation, in the amount of \$1,500.00, for repairing the deck railing, which he alleges was damaged during this tenancy. The Landlord submitted a photograph that depicts several spindles and the top railing missing from a balcony railing. Three of the spindles have been replaced, but not painted, and it appears there are still two spindles missing. Although the Landlord submitted an estimate that covers a large number of repairs, he did not submit any evidence that specifies the cost of repairing the damage to the deck railing.

The Tenant acknowledged that the top railing and several spindles were damaged during this tenancy. She stated that the top railing fell off because it was rotting, and she contends that she should not be held responsible for that damage. She stated that the spindles that were missing have been replaced, and that the compensation claim is excessive for the amount of damage caused.

The Landlord is seeking compensation, in the amount of \$500.00, for repairing a shower door, which he alleges was damaged during this tenancy. The Landlord stated that the shower door was installed just before the beginning of the tenancy. Although the Landlord submitted an estimate that covers a large number of repairs, he did not submit any evidence that specifies the cost of replacing the shower door.

The Tenant stated that the shower door fell off its tracks approximately six weeks after the beginning of the tenancy, at which time the glass shattered. She stated that nobody was in the bathroom at the time of the incident. She agrees that the shower door was relatively new and she hypothesizes that the door fell off because it was improperly installed.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the stove, which he stated took approximately four hours to clean. The Tenant acknowledged that she did not clean the stove at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$3,000.00, for a fence that was damaged during this tenancy. The Landlord submitted a photograph of a fence with one or two panels missing. He stated that the tenant occupying the other rental unit in this duplex advised him that the fence was damaged by the Tenants or their guests.

The Tenant stated that the fence is broken on the other side of the duplex than the side they occupied. She denied that the fence was broken by anyone living in or visiting the rental unit.

The Landlord is seeking compensation, in the amount of \$500.00, for repairing the kitchen cupboards. The Landlord stated that the cupboards had been painted at the beginning of the tenancy and that some of the paint has now chipped off due to the negligence of the Tenant. The Tenant agreed that the cupboards had small chips in them at the end of the tenancy, which she contends were the result of normal wear and tear. The Landlord did not submit any photographs or other documentary evidence that establishes the extent of the damage to the cupboards.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the fridge. The Tenant stated that she cleaned the fridge at the end of the tenancy. The Landlord did not submit any documentary evidence to corroborate his statement that the fridge needed cleaning.

Analysis

I find that the Tenant did not comply with the section 45 of the Act when they vacated the rental unit without providing the Landlord with one month's notice of their intent to vacate the rental unit. I find that the inadequate notice prevented the Landlord from finding new tenants for December 01, 2008, as the Landlord did not have sufficient time to advertise the rental unit. I therefore find that the Landlord is entitled to compensation for loss of revenue for December of 2008, in the amount of \$1,500.00.

Based on the mutual agreement of the parties, I find that the Tenant must compensate the Landlord, in the amount of \$2,225.00, as compensation for the following damage:

- damaged to interior door and door frames
- damage to walls
- dents in fridge
- damage to hardwood floors
- damage to blinds
- damage to pantry doors
- damage to closet doors

After hearing the statements of both parties regarding the damaged deck railing and after viewing the photographs of the damage, I find that the Tenant failed to comply with section 37(2) of the Act when she failed to repair the deck railing. As the photographs of the railing do not corroborate the Tenant's statement that the top railing was rotten, I find that the Tenant should have replaced and painted the top railing, and that she should have painted and repaired all missing spindles.

As the Tenant did not repair the damage to the railing, I find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the

Act. Although the Landlord failed to establish the cost of repairing the railing, I award the Landlord damages in the amount of \$150.00, which I considered to be a reasonable amount for repairing the damage that was depicted in the photograph submitted.

After hearing the statements of both parties regarding the damaged shower door, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the door. I find that the Tenant submitted no evidence to support her hypothesis that the shower door fell off due to faulty installation. I find, on the balance of probabilities, that the shower fell off due to the actions of the Tenant or a guest of the Tenant. In reaching this conclusion I was influenced by the following:

- it is uncommon for a shower door to fall off due to improper installation after it has been in place for more than six weeks
- the evidence established that the Tenant caused significant damage in other areas of the home, which indicates they did not treat the property with due care.

As the Tenant did not replace the shower door, I find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Although the Landlord failed to establish the cost of replacing the shower door, I award the Landlord damages in the amount of \$200.00, which I considered to be a reasonable amount for replacing a shower door.

In the absence of evidence to the contrary, I find that it took the Landlord approximately four hours to clean the stove, which the Tenant acknowledges was not cleaned at the end of the tenancy. As the Tenant failed to comply with section 37(2) of the *Act* when she did not clean the stove at the end of the tenancy, I find that the Landlord is entitled to compensation for any damages that flowed from the Tenant's failure to comply with the *Act*. In these circumstances, I find that the Landlord is entitled to \$60.00 in compensation for four hours labour, as I find \$15.00 per hour to be reasonable compensation for cleaning a stove.

I find that the Landlord submitted insufficient evidence to show that the Tenant, or a guest of the Tenant, was responsible for damaging the fence. In reaching this conclusion, I was strongly influenced by the fact that the fence is on common property that is shared with another rental unit, that the Landlord did not personally observe the fence being broken, and that he did not introduce direct evidence from anyone who observed the fence being broken. When one party attempts to seek compensation from another party, the person seeking compensation has the burden of proving that the respondent was responsible for the alleged damage. In these circumstances, the Landlord has not established that the Tenant is responsible for damaging the fence and I, therefore, dismiss the Landlord's claim for compensation for repairing the fence.

After considering the contradictory evidence of the parties regarding the damage to the kitchen cupboards, I find that the Landlord submitted insufficient evidence to establish that the chipped paint on the kitchen cupboards was more than reasonable wear and

tear. Without the benefit of photographs or other documentary evidence that establishes the nature of the damage to the cupboards, and in light of the contradictory evidence regarding the extent of the damage to the cupboards, I find that I am unable to conclude that the damage to the cupboards exceeded normal wear and tear. As the Act does not require tenants to repair damage that is caused by normal wear and tear, I dismiss the Landlord's application for compensation for damage to the kitchen cupboards.

After considering the contradictory evidence of the parties regarding the cleanliness of the fridge, I find that the Landlord submitted insufficient evidence to establish that the fridge needed cleaning. As the Landlord has failed to prove that the fridge needed cleaning, I dismiss the Landlord's claim for compensation for cleaning the fridge.

I find that the Landlords application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$4,185.00, which is comprised on \$1,500.00 as compensation for lost revenue, \$2,635.00 in compensation for damages to the rental unit and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the security deposit, in the amount of \$750.00, plus interest in the amount of \$10.30, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$3,424.70. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Date of Decision: January 20, 2009.