



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, MNSD, FF

Introduction

This decision was amended on April 02, 2009 to correct a mathematical error. The amount of the monetary Order was changed from \$172.78 to \$222.78.

This hearing dealt with cross applications between the parties.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for 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 relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's application are whether the Landlord is entitled to a monetary order for cleaning the rental unit and for not returning keys to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's application are whether the Tenant is entitled to a monetary order for living with old carpets; for living in the rental unit when the lock on the patio door did not work; for loss of quiet enjoyment; and reimbursement for rent paid subsequent to an alleged illegal rent increase.

Background and Evidence

The Landlord and the Tenant both submitted a written tenancy agreement that shows this tenancy began on June 01, 2006, at which time they paid a security deposit of \$375.00. The tenancy agreement shows that the rent at the beginning of this tenancy was \$750.00.

The Landlord and the Tenant agree that ownership of this residential complex changed during this tenancy.

The Landlord and the Tenant both submitted a copy of a Notice of Rent Increase, dated November 30, 2007, which indicates that the monthly rent was increased to \$780.00 on March 01, 2008. She stated that this Notice of Rent Increase that was dated November 30, 2007 was not served by the current Landlord and that the current Landlord did not raise the rent on March 01, 2008. She contends that this Notice must have been served in error by the previous Landlord.

The Leasing Agent stated that she has a copy of a Notice of Rent Increase, dated April 23, 2007, which indicates that the monthly rent was increased to \$780.00 on August 01, 2007. She was given the opportunity to fax this Notice to me, which I received shortly after the conclusion of the hearing. She stated that the Landlord purchased this building on January 16, 2008, at which time the Tenant was already paying rent of \$780.00.

The Tenant submitted an undated note that she wrote to the Landlord in which she indicates that she has been paying \$780.00 in rent since August of 2007. She stated that she does not have rent receipts with her from 2007, but she does have a rent receipt for February of 2008, which confirms that she was paying \$780.00 at that time.

The Landlord and the Tenant both submitted a copy of a Notice of Rent increase, which indicates that the monthly rent was subsequently increased to \$808.86 on August 01, 2008.

The Tenant stated that she vacated the rental unit on November 22, 2008 and the Leasing Agent stated that the tenancy ended on November 30, 2008.

The Tenant and the Leasing Agent agree that the Tenant completed a Condition Inspection Report on July 31, 2006, near the beginning of the tenancy, in the absence of an agent for the previous landlord. The Landlord submitted a copy of the report as evidence.

The Leasing Agent stated that she sent the Tenant a letter, dated November 19, 2008, in which she asked the Tenant to contact her to arrange a convenient time for a move out inspection. A copy of the letter was submitted in evidence. The Leasing Agent stated that she subsequently served the Tenant with a Notice of Final Opportunity to

Schedule a Condition Inspection Report, which advised the Tenant that an inspection would be completed at noon on November 30, 2008. A copy of that notice was submitted in evidence by the Landlord.

The Tenant and the Leasing Agent agree that the Tenant did not attend the meeting at noon on November 30, 2008. The Tenant stated that she did attend the rental unit at 11:30 a.m. but that her ride would not wait until noon, so she had to miss the inspection. The Leasing Agent stated that she completed the Condition Inspection Report on November 30, 2008, in the absence of the Tenant. The Landlord submitted a copy of that report.

The Landlord is claiming compensation, in the amount of \$84.00, for cleaning the carpets in the rental unit. The Leasing Agent stated that the carpets were very dirty, as noted on the inspection report. The Landlord submitted a receipt from a carpet cleaning company, on which the technician noted that the carpets were "very, very soiled". The Tenant acknowledged that she did not have the carpets professionally cleaned, although she stated that the carpets were vacuumed and scrubbed by hand.

The Landlord is claiming compensation, in the amount of \$324.00, for general cleaning in the rental unit. The Leasing Agent stated that the rental unit was very dirty at the end of the tenancy, as noted on the inspection report. She noted that the walls need cleaning, the appliances needed cleaning, and there was garbage left in the unit, and that staff spent 18 hours cleaning. The Landlord submitted a payroll sheet to show that an employee spent 18 hours cleaning the rental unit.

The Tenant stated that she cleaned the rental unit at the end of the tenancy, although she acknowledges that she forgot to clean the stove. She stated that her uncle and nieces helped her clean the rental unit.

The Landlord is claiming compensation, in the amount of \$100.00, for disposing of furniture and garbage that was left in the rental unit. The Leasing Agent noted that furniture was left in the rental unit on the inspection report. The Landlord submitted a payroll sheet to show that an employee spent 4 hours disposing of the garbage.

The Tenant acknowledged that she left a computer desk and a chair in the rental unit, but denies leaving any other garbage.

The Landlord is claiming compensation, in the amount of \$55.27, for re-keying the locks in the rental unit and \$25.00 for not returning the key to the laundry room. The Leasing Agent stated that the locks to the rental unit needed to be changed because the Tenant did not return the keys to the rental unit. The Landlord submitted a receipt, in the amount of \$55.27, for re-keying the locks and a letter, signed by the Tenant, in which she agrees to pay a \$25.00 fee if she does not return the laundry room key. The

Tenant acknowledged that she did not return the keys to the rental unit and the laundry room.

The Tenant is claiming compensation, in the amount of \$5,000.00, for being unable to lock the sliding glass door to her rental unit. She submitted a note, dated June 20, 2007, in which she notified the previous landlord of her need to have the lock on the door replaced. She acknowledged that she did not advise her current Landlord of the problem in writing. She stated that she verbally advised the current Landlord's receptionist of the problem on several occasions when she delivered her rent. She initially could not recall the receptionist's name, although she subsequently identified her by name.

The Leasing Agent stated that she does not know the woman identified by the Tenant as the current Landlord's receptionist and that she is not an employee of the current Landlord. Both the Leasing Agent and the Regional Manager deny being told that there was a problem with the lock on the sliding glass door. They argue that they can not be held responsible for the deficiency, as they were not properly advised of the problem.

The Tenant is claiming compensation, in the amount of \$5,000.00, for living with inadequate carpets for the duration of her tenancy. The Tenant stated that the carpets were in poor condition at the beginning of the tenancy and that the previous Landlord agreed to replace the carpet on several occasions. The Tenant submitted no evidence to corroborate her statement that the previous Landlord agreed to replace the carpets. She stated that she did not ask the current Landlord to replace the carpets.

The Leasing Agent argued that even if the Tenant asked to have the carpets replaced, the request would have been denied. She stated that the rental unit has new tenants and that the carpets have not been replaced.

The Tenant is claiming compensation, in the amount of \$5,000.00, for loss of quiet enjoyment for incidents that occurred on October 18, 2008 and November 05, 2008.

The Tenant contends that the Landlord interfered with her quiet enjoyment on October 18, 2008 when two maintenance men were observed peering into her rental unit, at which time her son threatened the men with a baseball bat. She stated that she contacted the RCMP regarding the incident, who attended but did not take action.

The Leasing Agent notes that the Tenant lives on the second floor so the maintenance men looking into her window could not constitute an unreasonable disturbance. The Landlord submitted a letter from an occupant of the rental unit who stated that the occupant phoned the Landlord's emergency line on October 19, 2008 because of a disturbance caused by the occupants in this rental unit. He stated that an agent for the Landlord attended and confronted an occupant of the rental unit, who was holding a weapon. He stated that the agent for the Landlord told him that the police had been

called. He stated that he observed the police arrive and that he noted the noise in the rental unit stop shortly thereafter.

The Tenant contends that the Landlord interfered with her quiet enjoyment on November 05, 2008 when the Leasing Agent entered her rental unit without authority.

The Landlord and the Tenant agreed that the Landlord served the Tenant with Notice of Entry on November 04, 2008. The Notice clearly states that the Landlord will be entering the rental unit between 9:00 a.m. and 5:00 p.m. on November 05, 2008 for the purposes of a "routine building/suite inspection". The parties agree that the Leasing Agent did enter the rental unit on November 05, 2008, although she had to force her way into the rental unit as the Tenant had barricaded the door with a chair.

The Tenant stated that she phoned the Residential Tenancy Branch on November 04, 2008, after she received the Notice of Entry, and was advised that the Landlord did not have the right to enter her rental unit. She stated that she wrote a letter to the Landlord informing the Landlord that she did not have her permission to enter the rental unit.

Analysis

I find, on the balance of probabilities, that the Tenant's rent was first increased on August 01, 2007, which is more than twelve months after the tenancy began, which is in accordance with the timelines established by legislation. I find that the Notice of Rent Increase that was dated November 30, 2007 and purported to increase the rent on March 01, 2008, had to have been issued in error, as the Tenant was already paying the increased rent. In reaching this conclusion, I was strongly influenced by the Tenant's note in which she states that she was paying the increased rent since August of 2007 and her testimony that she has a rent receipt showing that she was paying the increased rent on February of 2008.

The parties agree that the rent was increased a second time on August 01, 2008 which is twelve months after the previous rent increase, which is in accordance with the timelines established by legislation. As the rent throughout this tenancy has been increased in accordance with timelines established by the legislation, I dismiss the Tenant's application for compensation for a rent refund.

After hearing the contradictory evidence regarding the cleanliness of the carpets at the end of the tenancy, I find that the carpets needed cleaning. In reaching this conclusion, I was strongly influenced by the note made by the technician, who noted that the carpets were very, very soiled.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she did not leave the carpets in reasonably clean condition at the end of the tenancy. I therefore

find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$84.00.

After hearing the contradictory evidence regarding the cleanliness of the rental unit, I find that the unit needed cleaning and that furniture/garbage was left behind. In reaching this conclusion, I relied heavily on the Condition Inspection Report that was completed at the end of the tenancy, which showed that the rental unit required cleaning. Although this report was completed in the absence of the Tenant, the Tenant had a reasonable opportunity to attend the inspection. When making this decision, I was guided by section 21 of the *Residential Tenancy Regulation*, which stipulates that a Condition Inspection Report is evidence of the condition of the rental unit on the date of the inspection, unless there is preponderance of evidence to the contrary. The Tenant did not provide me with compelling evidence to refute the contents of the Condition Inspection Report.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she did not leave the rental unit reasonably clean at the end of the tenancy and I find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In the absence of evidence to the contrary, I find that the Landlord spent 18 hours cleaning and 4 hours removing garbage and that it is reasonable to compensate them at a rate of \$18.00 per hour for both tasks, for a total of \$396.00.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to return the keys to the rental unit and the residential property. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$55.27 for re-keying the locks to the rental unit and the \$25.00 fee she agreed to pay if she did not return the laundry room key.

There is a general legal principle that places the burden of proving a fact on the person who alleges it and not upon the person who denies it. In this regard, I find the Tenant bears the burden of proving that she informed the current Landlord that the lock on her sliding glass door did not work. I further find that the Tenant submitted insufficient evidence to show that she informed the current Landlord that the lock on her sliding glass door needed to be repaired.

Section 7(2) of the *Act* stipulates, in part, that a tenant who claims compensation for damage or loss that results from the landlord's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss. While landlords are responsible for maintaining the residential property in a state of repair that complies with health, safety, and housing standards, they can only do so if they are aware of a deficiency. In these circumstances, I find that the Tenant failed to mitigate the problem by failing to inform the current Landlord that the locks did not work, therefore I find that

the current Landlord is not liable for failing to remedy the situation. On this basis, I dismiss the Tenant's claim for compensation for being unable to lock her sliding glass door.

I find that the Tenant has submitted insufficient evidence to establish that either the current Landlord or the previous landlord has a contractual or legislated obligation to replace the carpets in the rental unit. As the landlords were not obligated to replace the carpets in the rental unit, I dismiss the Tenant's claim for compensation for living with the carpets that were in the rental unit at the beginning of her tenancy.

I find that the Tenant has submitted insufficient evidence to establish that an agent for the Landlord was responsible for the disturbance on October 19, 2008. In reaching this conclusion, I was strongly influenced by the letter submitted by another occupant of the residential complex, which indicated that he made a noise complaint to the Landlord on that date; that an agent for the Landlord subsequently responded and confronted occupants of the rental unit; and that he witnessed an occupant with a weapon. In considering this matter, I find that it is more reasonable to believe that the Landlord was responding to a complaint made by another occupant of the residential complex, and that the Tenant, or guests of the Tenant, initiated the conflict. On this basis, I do not find that the Tenant is entitled to compensation for loss of quiet enjoyment in relation to this incident.

Section 29(2) of the *Act* stipulates that a landlord may inspect a rental unit on a monthly basis. Section 29(1)(b) of the *Act* stipulates that a landlord may enter a rental unit provided they give 24-hour written notice of their intent to enter and that they provide a reasonable purpose for entering. In these circumstances, I find that the Landlord gave proper written notice of their intent to enter and that it was reasonable and lawful to enter for the purpose of conducting a routine inspection. As I have found that the Landlord did not contravene the *Act* when they entered the rental unit on November 05, 2008, I find that the Tenant is not entitled to compensation for loss of quiet enjoyment in relation to this incident.

I find that the Landlord's 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 \$610.27, which is comprised on \$560.27 in damages 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 plus interest, in the amount of \$387.49 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$222.78. 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: March 20, 2009

Date of Amended Decision: April 2, 2009.