



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for 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.

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, for the return of her security deposit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. As the Tenant did not attend the hearing in support of her Application, I find that she failed to diligently pursue the Application and I therefore dismiss her Application without leave to reapply.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the address noted on the Application, on February 23, 2009. The Landlord submitted a Canada Post receipt, with a tracking number. The Canada Post website shows the mail was delivered on February 25, 2009. She stated that she personally served the Tenant with documents amending the amount of her monetary claim at the Tenant's place of employment. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

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; 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 Agent for the Landlord stated that the Tenant moved into the rental unit on August 28, 2008; that the Tenant was required to pay monthly rent of \$1,150.00; and that the Tenant paid a security deposit of \$575.00 on, or about, August 15, 2008.

The Landlord stated that there was a flood in the rental unit on January 03, 2009. She stated that she believed she had cleaned and repaired the water damage to the rental unit but she learned, on January 11 or 12, 2009, that there was still a smell in the rental unit. She stated that she cleaned the rental unit again on January 12 or 13, 2009. She stated that on January 12, 2009 she received written notice that the Tenant intended to vacate the rental unit, although the Tenant did not advise of the date that she would be vacating.

The Landlord stated that the Tenant did vacate the rental unit on January 22, 2009, after paying full rent for the month of January. She stated that she quickly viewed the rental unit on January 22, 2009 and did not notice any of the damage that she is now claiming. As she did not notice damage to the rental unit, the Landlord returned the Tenant's security deposit on January 22, 2009. She stated that she noticed the damage to the rental unit on January 23, 2009, at which time she cancelled the cheque that she had written to the Tenant for the return of the security deposit.

The Landlord stated that she would like to voluntarily reimburse \$575.00 of the rent the Tenant paid for January, to compensate the Tenant for the days she did not reside in the rental unit and for the inconvenience of the flood.

The Landlord is seeking compensation, in the amount of \$595.00, to replace a couch that was damaged during the tenancy. The Landlord stated that there was an undamaged couch in the rental unit at the beginning of the tenancy, which was damaged during the tenancy by the Tenant's cat, which scratched the couch in several places. The Landlord called a witness, who stated that she observed the couch prior to the tenancy, at which time there was no damage to the couch. The Landlord submitted photographs of the couch to show there were several cuts and scratches on it, that are consistent with damage that would be caused by a cat, and that it had a significant amount of cat hair on it.

The Landlord stated that she purchased a used couch, for \$550.00 from Craig's list, and she paid \$150.00 to have the couch delivered. She stated that she was able to sell the damaged couch for \$200.00, and she is seeking compensation for the difference between the sale of the damaged couch and the purchase of another used couch. She is also seeking compensation, in the amount of \$45.00, for the time and expense of cleaning the couch and listing it for sale.

The Landlord is seeking compensation, in the amount of \$40.00, for a 30"X50" carpet that was damaged during the tenancy. The Landlord stated that the carpet smelled of urine, which she assumed was cat urine, and that the carpet had been left in the yard. The Landlord submitted a photograph of the carpet that shows this carpet is very dirty. The Witness testified that the carpet was not dirty at the beginning of the tenancy and that it smelled of urine at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$450.00, for damage to a single mattress in the rental unit. She stated that she located several small stains on the mattress after the tenancy ended, which do not show up well in photographs. She stated that the stains smell like urine, and she assumes they were caused by the Tenant's cats. The Witness stated that she also observed the stains on the mattress and noted they smelled like urine.

Analysis

In the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the couch that was in the rental unit and to repair the damage to the couch that was caused during her 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*. In these circumstances, I find that the Landlord replaced the couch with a used couch, which cost her \$700.00, including delivery. I find that she is entitled to compensation in that amount, less the \$200.00 she recovered from selling the damaged couch. I also find that the Landlord is entitled to \$45.00 in compensation for cleaning and advertising the damaged couch, for a total of \$545.00.

In the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the carpet at the end of the tenancy. Based on the testimony of the Landlord and her witness, I find that the carpet smelled of cat urine and needed to be replaced. Although the Landlord did not submit a receipt to establish the value of the carpet, based on the photograph of the carpet, I find that compensation in the amount of \$40.00 is reasonable.

In the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean or replace the single mattress at the end of the tenancy. Based on the testimony of the Landlord and her witness, I find that the mattress smelled of cat urine and needed to be replaced. Although the Landlord did not submit a receipt to establish the value of the mattress, based on my personal knowledge of the cost of mattresses, I find that compensation in the amount of \$450.00 is reasonable.

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 \$1,085.00, which is comprised on \$545.00 to replace the couch; \$40.00 to replace a carpet; \$450.00 for a single mattress; 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 \$575.00 security deposit, plus interest in the amount of \$3.28, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of amount \$506.72. 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.

I note that the Landlord has expressed a desire to voluntarily reimburse the Tenant one half of the rent that the Tenant paid for rent for January of 2009, which is \$575.00. While I will not issue an Order requiring the Landlord to compensate the Tenant for that amount, the Landlord retains the right to voluntarily compensate the Tenant in that amount or she can elect not to enforce this monetary Order.

Date of Decision: April 1, 2009.
