



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

MNR, MNSD

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 and to retain all or part of the security deposit. It is apparent, from notations on the Application for Dispute Resolution, that the Landlord is also seeking a monetary Order for damage to the rental unit, and the Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that he did not receive the evidence submitted by the Tenant until April 22, 2009, which is only three full business days prior to the hearing. I find that I am able to reach a decision in this dispute without considering the evidence submitted by the Tenant, so the issue of late service of evidence is moot.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; a monetary Order for damage to the rental unit; and to keep all or part of the security deposit.

Background and Evidence

The Agent for the Landlord and the Tenant agree that that this tenancy began on October 17, 2008; that the Tenants were required to pay monthly rent of \$895.00; that the Tenants paid a security deposit of \$447.50 on October 17, 2008; and that the tenancy ended on November 30, 2008 or December 01, 2008.

The Advocate for the Tenant stated that she sent the male Tenant's forwarding address to the Landlord on January 19, 2009. The Agent for the Landlord acknowledged receiving the male Tenant's forwarding address "around" January 19, 2009.

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The Landlord submitted an Application for Dispute resolution on February 13, 2009, in which he applied to keep the security deposit paid by the Tenants.

The Landlord is seeking compensation, in the amount of \$160.00, for repairing walls that the Landlord contends were damaged by the Tenants. The Agent for the Landlord stated that there were numerous scuff marks and knife marks on the walls at the end of the tenancy, which were not present at the beginning of the tenancy. The Tenant stated that the walls had a few minor scuffs, but nothing significant. The Landlord submitted no documentary evidence, such as photographs or a Condition Inspection Report that was completed at the end of the tenancy, to establish that the walls were damaged.

The Landlord is seeking compensation, in the amount of \$140.00, for cleaning the carpets. The Agent for the Landlord stated that the carpets needed cleaning at the end of the tenancy and the Tenant stated that the carpets were reasonably clean at the end of the tenancy. The Landlord submitted no documentary evidence, such as photographs or a Condition Inspection Report that was completed at the end of the tenancy, to establish that the carpets required cleaning.

The Landlord is seeking compensation, in the amount of \$115.00, for cleaning the drapes. The Agent for the Landlord stated that the drapes needed cleaning at the end of the tenancy and the Tenant stated that the drapes did not require cleaning. The Landlord submitted no documentary evidence, such as photographs or a Condition Inspection Report that was completed at the end of the tenancy, to establish that the drapes required cleaning.

The Agent for the Landlord stated that there is an addendum in the tenancy agreement that requires tenants to clean the carpets and the drapes at the end of each tenancy. The Landlord did not submit a copy of the addendum to the tenancy agreement.

The Landlord is seeking compensation, in the amount of \$25.00, for general cleaning of the rental unit. The Agent for the Landlord stated that the rental unit required approximately one hour of cleaning at the end of the tenancy and the Tenant stated that the rental unit was left in reasonably clean condition. The Landlord submitted no documentary evidence, such as photographs or a Condition Inspection Report that was completed at the end of the tenancy, to establish that the rental unit required cleaning.

The Agent for the Landlord and the Tenant agreed that the Tenants were required to pay the hydro bill for this rental unit. The Landlord is seeking compensation, in the amount of \$34.01, for an unpaid hydro bill. The Tenant stated that he has never been presented with an unpaid hydro bill. The Landlord did not submit a copy of an unpaid hydro bill.

Analysis

There is no dispute that the Tenants entered into a tenancy agreement with the Landlord, that the Tenants were required to pay monthly rent of \$895.00; and that the Tenants paid a security deposit of \$447.50.

I find that the Advocate for the Tenant mailed the male Tenant's forwarding address to the Landlord on January 19, 2008. In reaching this conclusion, I was influenced by the testimony of the Advocate for the Tenant, who stated that she mailed it on that date and the testimony of the Agent for the Landlord, who stated that he received it "around" that date.

Section 90 of the *Residential Tenancy Act (Act)* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Landlord received the Tenant's forwarding address on January 24, 2009.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord did not repay the security deposit and the Landlord did not file an Application for Dispute Resolution until February 13, 2009, which is more than fifteen days after the tenancy ended and more than fifteen days after the Landlord received the Tenant's forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest on the original amount.

There is a general legal principle that requires the places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the walls were damaged, that the carpets required cleaning, that the drapes required cleaning, or that the rental unit required general cleaning. In reaching this conclusion, I note that the parties gave contradictory evidence regarding the condition of the walls, and the cleanliness of the carpets, drapes, and rental unit at the end of the tenancy. On this basis, I dismiss the Landlord's application for compensation for damage to the walls and for cleaning costs.

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I find that the Landlord has submitted insufficient evidence to establish that there is an addendum to the tenancy agreement that required the Tenants to clean the drapes and the carpets at the end of the tenancy. In reaching this conclusion, I note that a copy of the addendum was not submitted in evidence.

I find that the Landlord has submitted insufficient evidence to establish that there is an outstanding hydro bill of \$34.01. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as a copy of the bill, which establishes the Tenants incurred a hydro bill in that amount. On this basis, I dismiss the Landlord's application for compensation for unpaid utilities of \$34.01.

Conclusion

I find that the Landlord has failed to establish a monetary claim, and I hereby dismiss the Landlord's application to retain any portion of the Tenants' security deposit.

I find that the Tenants have established a monetary claim of \$896.39, which is comprised of the return of the original security deposit, double the security deposit pursuant to section 38(6) of the *Act*, and \$1.39 in interest of the original deposit. Based on these determinations I grant the Tenants a monetary Order for the amount of \$896.39. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that 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*.