



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, 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 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 female Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant via registered mail at the service address noted on the Application, on July 15, 2009. The female Landlord stated that the Tenant provided the service address to the Landlord when the Tenant provided her notice to end the tenancy. A tracking number was provided. The Canada Post website shows the mail was refused by the recipient and was returned to the sender. 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 Landlord submitted a written tenancy agreement that shows that this tenancy began on December 01, 2008; that the Tenant was required to pay monthly rent of \$1,000.00; and that the Tenant paid a security deposit of \$500.00 on November 23, 2008.

The female Landlord stated that on June 01, 2009 the Tenant provided written notice, via email, of her intent to vacate the rental unit on June 30, 2009. She stated that the Tenant vacated the rental unit on July 01, 2009.

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The female Landlord stated that a condition inspection report was not completed at the beginning of this tenancy. She stated that parties inspected the rental unit at the beginning of the tenancy; the Tenant took several photographs of the rental unit; and the parties agreed the rental unit was in good condition at that time.

The female Landlord stated that a condition inspection was scheduled for June 30, 2009 at 1300 hours, at the Tenant's written request, but the Tenant did not attend that scheduled meeting. She stated that her agent telephoned the Tenant to make arrangements to meet on July 2, 2009 at 1700 hours but the Tenant did not attend that meeting either. The Landlord submitted a Notice of Final Opportunity to Schedule a Condition Inspection, in which the Landlord proposes to meet at 1:00 p.m. on June 30, 2009, however the female Landlord acknowledged that this Notice was not served on the Tenant until after the proposed meeting time had passed. The Landlord submitted a Notice of Final Opportunity to Schedule a Condition Inspection, in which the Landlord proposes to meet at 5:00 p.m. on July 02, 2009, however the female Landlord acknowledged that this Notice was not served on the Tenant until after the proposed meeting time had passed.

The Landlord is claiming compensation, in the amount of \$993.25, for the cost of repairing the hot tub. The female Landlord stated that the hot tub was in good working order at the beginning of the tenancy; that the Landlords offered to drain and winterize the hot tub when this tenancy began; and that the Tenant indicated she wished to use the hot tub and declined the opportunity to have the hot tub drained and winterized. The female Landlord stated that the Tenant agreed to care for the hot tub and to contact Eric's World of Leisure in the event of problems, however there was no evidence submitted to establish that the Tenant was provided with written instructions regarding the care of the hot tub or that she was clearly told that she needed to regularly check the hot tub to ensure that the power had not been disrupted.

The Landlord submitted a copy of a work requisition from Eric's World of Leisure, dated December 27, 2009, which indicates that the occupants contacted this hot tub technician to report that the breaker had tripped and that the occupant observed smoke when they attempted to reset the breaker. On the invoice the technician made a note that caused me to believe he speculated that the plumbing had frozen. The Tenant subsequently cancelled the request to have the company make a service call.

The Landlord submitted a copy of an invoice from Eric's World of Leisure, dated July 10, 2009, for the amount of \$100.75. The invoice indicates that the technician determined that the hot tub was damaged as the result of frozen pipes. The Landlord was billed \$100.75 for the call out and assessment.

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The Landlord submitted a copy of an invoice from Eric's World of Leisure, dated July 10, 2009, for the amount of \$998.86. The invoice indicates that the technician repaired a variety of items in the hot tub and that a further assessment would be necessary when it was determined that the tub would hold water. The Landlord is only claiming compensation in the amount of 892.50 for this bill, as they elected to not seek compensation for the taxes that were charged.

The female Landlord declared that this damage would not have occurred if the Tenant had indicated they did not wish to care for the hot tub during the winter, at which time the Landlord would have drained and winterized the hot tub or if the breaker had not been tripped and the water had continued to circulate in the hot tub. The Landlord stated that she believes that the Tenant either turned off the breaker or that the breaker was tripped during a "power bump".

The Landlord is claiming compensation, in the amount of \$240.00, for the cost of mowing the lawn and edging the grass at the end of the tenancy. The female Landlord stated that the Tenant had agreed to maintain the yard; that the yard was in good condition at the beginning of the tenancy; and that the grass was approximately three feet high at the end of the tenancy. She stated that her son mowed and trimmed the grass at the end of the tenancy; that it took him approximately twelve hours; and that she paid him \$240.00 for his labour.

The Landlord is claiming compensation, in the amount of \$200.00, for the cost of cleaning the rental unit at the end of the tenancy. The female Landlord stated that the rental unit required significant cleaning at the end of the tenancy because the bathroom had not been cleaned, the laundry room had not been cleaned, the floors had not been cleaned, and the walls had not been cleaned. She stated that her daughter spent approximately ten hours cleaning the rental unit; and that she paid her \$200.00 for her labour.

The Landlord is claiming compensation, in the amount of \$500.00, for the cost of repairing walls and painting the rental unit at the end of the tenancy. The female Landlord stated that the walls in the rental unit has been chipped, had several small holes and dings, and that they required repair and painting. She stated that the Landlord and her children spent approximately twenty-five hours painting the rental unit; for which she is seeking compensation at a rate of \$15.00 per hour.

The Landlord is claiming compensation, in the amount of \$90.24, for the cost of cleaning the carpet in the rental unit. In the addendum to the tenancy agreement, which was submitted in evidence, the Tenant agreed to have the carpet professionally cleaned at the end of the tenancy. The female Landlord stated that the carpet was not cleaned

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at the end of the tenancy. The Landlord submitted a receipt that shows they paid \$90.24 to have the carpet cleaned on August 05, 2009.

The Landlord is claiming compensation, in the amount of \$118.17, for blinds that were missing at the end of the tenancy. The female Landlord stated that the blinds that were in the rental unit at the beginning of the tenancy were missing at the end of the tenancy. The Landlord submitted a receipt that shows they paid \$106.14 plus taxes to replace the blinds.

The Landlord withdrew the application for compensation for repairing a hole in the porch carpet; for replacing missing light bulbs; for repairing the toilet; and for repairing the shower.

Analysis

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the hot tub was damaged when the circuit breaker for the hot tub was tripped, which resulted in a loss of power to the hot tub, which resulted in frozen plumbing. Although the Landlord speculated that the Tenant either turned off the breaker or the breaker was tripped due to an irregularity in the power supply, I find that the Landlord has been unable to establish whether the Tenant, by her actions or negligence, caused the disruption in the power source.

While I accept that it is possible that the power was disrupted because the Tenant intentionally turned off the breaker, I find it equally possible that the power was disrupted because there was an electrical surge or malfunction that was entirely unrelated to the actions of the Tenant. As the Landlord has submitted insufficient evidence to show that the Tenant is responsible for the disruption in power that caused the damage to the hot tub, I find that the Tenant is not responsible for repairing the subsequent damage. On this basis, I dismiss the Landlord's application for compensation for damage to the hot tub.

In reaching this conclusion, I was influenced, to some degree, by the absence of evidence that establishes that the Tenant was cautioned about the hazards of a power loss and that she was specifically told to check the hot tub on a regular basis to ensure that the power had not been disrupted.

Based on the evidence provided by the Landlord, and in the absence of evidence to the contrary, I find that the Tenant was responsible for yard maintenance the yard; that the yard was in good condition at the beginning of the tenancy; that the grass needed to be mowed and trimmed at the end of the tenancy; and that it took the Landlord's son twelve hours to mow and trim the lawn. I find that the Tenant failed to comply with

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section 37(2) of the *Act* when she failed to leave the yard in good 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 \$240.00 for the cost of mowing and trimming the lawn. I find this reasonable compensation for twelve hours of labour.

Based on the evidence provided by the Landlord, and 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 leave the rental unit in reasonably good 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 \$200.00 for the cost of cleaning. I find this reasonable compensation for ten hours of labour.

Based on the evidence provided by the Landlord, and 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 repair damage to the walls. Based on the description of the walls provided by the Landlord, and in the absence of photographs that clearly establish the nature of the damage to the walls, I am not satisfied that the damage to the walls exceeds normal wear and tear. As the Landlord has submitted insufficient evidence to establish that the Tenants damaged the walls beyond reasonable wear and tear and tenants are not required to repair damage that is caused by reasonable wear and tear, I hereby dismiss the Landlord's claim for compensation for repairing the walls.

Based on the evidence provided by the Landlord, and 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 carpets 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 \$90.24.

Based on the evidence provided by the Landlord, and 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 leave the blinds in the rental unit 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 at least \$118.17.

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.



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Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$698.41, which is comprised on \$648.41 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 of \$500.00, plus interest of \$0.80, in partial satisfaction of this monetary claim, pursuant to section 72(2) of the *Act*.

Based on these determinations I grant the Landlord a monetary Order for the difference of amount \$197.61. 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.

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: November 04, 2009.

Dispute Resolution Officer