



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, MND, FF

Introduction

This hearing was scheduled to deal with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for damages to the rental unit; to retain the security deposit; and to recover the fee for filing the Landlord's Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damages or loss; for the return of his security deposit; and to recover the fee for filing his 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 is relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to compensation for damages done to the rental unit during the tenancy; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided is relation to the Tenant's Application for Dispute Resolution, are whether the Tenant is entitled to recover the cost of cleaning the rental unit; to compensation for items that he left in the rental unit; to the return of all or part of his security deposit; and to recover expenses associated to filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 25, 2006 and that the Tenant was required to pay monthly rent of \$1,800.00. The Landlord contends that the Tenant paid a security deposit of \$900.00 on November 15, 2009; the Tenant stated that it was paid on November 14, 2009; and the written tenancy agreement, which was submitted in evidence, indicates that it was paid on November 15, 2009.

The Landlord and the Tenant agree that they mutually agreed to end this tenancy on July 15, 2009. The Tenant stated that the moving company he had hired was late arriving on July 15, 2009 so he had to re-schedule the cleaning company that he had scheduled for July 15, 2009. The Landlord and the Tenant agree that the Tenant asked the Landlord if the Landlord could provide the cleaning company access to the rental unit on July 16, 2009 but the Landlord declined the request.

The Landlord #2 stated that he and Landlord #3 met with the Tenant on July 14, 2009 or July 15, 2009 at a local coffee shop and attempted to schedule a time to conduct an inspection of the rental unit. He stated that the Tenant would not agree to a time for the inspection. The Tenant contends that this meeting did not occur.

The Landlord #2 stated that the Landlord attended at the residential complex, in company with a police officer, on July 15, 2009 because the Landlord had concerns that the rental unit would be damaged. The Landlord #1 stated that the attending police officer recommended that they not meet with the Tenant on that date. The Tenant agreed that he spoke with the attending police officer on that date, who told him that the dispute was a civil matter that could not be resolved by the police.

The Landlord and the Tenant agreed that the cleaning service cleaned the rental unit on July 16, 2009.

The Landlord and the Tenant agreed that the Landlord#3 was to meet with the Tenant at 2100 hours on July 16, 2009 for the purposes of completing a Condition Inspection Report. The Landlord #3 stated that he cancelled this meeting as he had concerns for his safety due to the recent heated conversations between the Tenant and the Landlords #1 and #2; that the Tenant wanted him to bring the security deposit to the meeting, in cash; and that he had seen the Tenant with an unknown male a few hours prior to the meeting.

The Landlord and the Tenant agree that the parties agreed to meet on July 23, 2009 at 2000 hours for the purposes of inspecting the rental unit but this meeting was also cancelled by the Landlord. The Landlord #1 stated that she cancelled this meeting because of text messages she was receiving from the Tenant, which were becoming increasingly aggressive. A copy of a text message, dated July 22, 2007, from the Tenant to the Landlord, which can be construed as aggressive and inappropriate, was submitted in evidence.

The Landlord is claiming compensation, in the amount of \$10.00, for the cost of replacing keys to the rental unit; \$20.00 for the cost of replacing two key fobs that provided access to the residential complex; and \$94.50 to reprogram the combination lock on the to the front door of the rental unit. The Landlord #1 stated that the Tenant did not return the key to the mail box, keys to the door to the garage, and two key fobs that provide access to the residential complex. The Landlord #1 stated that they were forced to reprogram the combination lock on July 16, 2009 because the Tenant still had access to the residential complex, and therefore had access to the rental unit via the combination lock. The Landlord submitted a receipt from a locksmith, in the amount of \$94.50, for the cost of reprogramming the combination lock.

The Tenant acknowledged that he did not return the keys or the access fobs. He stated that he was advised by the caretaker that the access fobs were not functional. He stated that he did not return the keys or the access fobs because he did not have an address for the Landlord, although he acknowledged that the address was written on his copy of the tenancy agreement.

The Landlord is claiming compensation, in the amount of \$63.00, for cleaning the carpet. The Landlord #1 stated that the carpets were stained and smelled of smoke at the end of the tenancy. The Landlord submitted a copy of a receipt from a professional carpet cleaning company, in which the technician noted there were stains and a "heavy smell (smoking)". The receipt indicates that the Tenant paid \$63.00 to clean the carpet. The Landlord submitted several photographs that show the carpet was stained at the end of the tenancy.

The Tenant acknowledged that the carpets were stained during this tenancy; that he cleaned the carpet prior to the end of the tenancy; and that he was unable to remove the stains.

The Landlord is claiming compensation, in the amount of \$1,200.00, for the cost of repainting the rental unit. The Landlord #1 stated that the entire unit needed to be repainted primarily because it smelled strongly of cigarette smoke and partly because there were red stains on the wall. She stated that the Tenant was not permitted to smoke in the rental unit. The Landlord submitted a copy of a quote from a painting company, in which the technician noted there was a strong smell of cigarette smoke, The estimate indicates that the Landlord will have to pay \$1,200.00 to repaint the rental unit.

The Tenant agreed that he was not permitted to smoke in the rental unit; he stated that he did not personally smoke in the rental unit; that he had social gatherings in which he permitted guests to smoke; and that he does not believe that the rental unit smelled of smoke at the end of the tenancy.

The Tenant is seeking the return of double his security deposit. The Landlord and the Tenant agree that the Tenant provided the Landlord with his forwarding address, in

writing, on July 17, 2009. Residential Tenancy Branch records show that the Landlord filed an Application for Dispute Resolution, seeking to keep the security deposit, on July 27, 2009.

The Tenant is seeking compensation for the cost of cleaning the rental unit, which he believes he is entitled to simply because the Landlord failed to complete a Condition Inspection Report.

The Tenant is seeking compensation, in the amount of \$22.00, for a shower curtain; \$30.00 for two empty water containers; and \$34.00 for a pair of sandals that he left in the rental unit on July 15, 2009. He stated that he was unable to retrieve these items when he returned to the rental unit on July 16, 2009 at 1400 hours, as the combination on the front door of the rental unit had been changed. He stated that the Landlord told him that the caretaker had these personal items but when he contacted the caretaker on July 20, 2009 or July 21, 2009 he was advised that the items had been discarded.

The female Landlord acknowledged that the locks to rental unit had been reprogrammed by July 16, 2009 at 1400 hours as she believed the Tenant had vacated the rental unit; that the Tenant did leave a used shower curtain, a used pair of sandals; and two refillable water containers in the rental unit. She stated that the caretaker took possession of those items; that the Tenant was advised of the location of the items; and that she assumed the Tenant retrieved those items from the caretaker.

The Tenant is seeking compensation, in the amount of \$13.50, for the cost of photocopying evidence in preparation for these proceedings.

Analysis

Based on the evidence provided by both parties, I find that this tenancy began on November 25, 2006 and that the Tenant was required to pay monthly rent of \$1,800.00. I find that the Tenant paid a security deposit of \$900.00 on November 15, 2006, as stated by the Landlord and indicated by the written tenancy agreement that was submitted in evidence. I favor the Landlord's testimony over the Tenant's testimony in regards to the date the security deposit was paid, as the written tenancy agreement corroborates the Landlord's testimony. I find that the written tenancy agreement, which is signed by the Tenant and the Landlord, is the best evidence of the terms of this tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; and establishing the amount of the loss or damage.

I find that the Tenant failed to comply with section 37(2)(b) of the *Act* when he failed, by his own admission, to return the keys and the access fobs to the Landlord at the end of the tenancy. The Tenant had an address for the Landlord and I find that he had an obligation to return the keys to that address if he was unable to make other arrangements for the return of the keys. As the Tenant failed to comply with section 37(2)(b) of the *Act*, I find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*.

In addition to establishing that the Tenant failed to return all means of accessing the rental unit, the Landlord must also accurately establish the cost of repairing the damage caused by a Tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord established that it paid \$94.50 to have the combination lock to the rental unit reprogrammed, which was necessary because the Tenant had access to the residential complex, and I find the Landlord is entitled to compensation in that amount. Conversely, I find that the Landlord failed to establish the true cost of replacing the access fobs and the missing keys. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$30.00 to replace these items. On this basis, I dismiss the Landlord's claim for compensation for replacing the keys and the access fobs.

I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed, by his own admission, to leave the carpet in reasonably clean condition at the end of the tenancy. As the Tenant failed to comply with section 37(2)(a) of the *Act*, I find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$63.00.

I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when he failed to eliminate the smell of smoke from the rental unit. Although the Tenant declared that the rental unit did not smell of smoke, I find that there was a strong smell of cigarette smoke at the end of the tenancy. In reaching this conclusion I was strongly influenced by the evidence of the carpet technician and the painter, who both documented that the rental unit smelled of smoke. As the Tenant failed to comply with section 37(2)(a) of the *Act*, I find that the Landlord is entitled to compensation for the cost of eliminating the smell of smoke from the rental unit. In these circumstances, I find that painting the rental unit is a reasonable method of eliminating the smell of smoke and I find that the Landlord is entitled to compensation in the amount of \$1,200.00, as this claim is supported by an estimate from a painter.

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 did comply with section 38(1),

as it filed an Application for Dispute Resolution ten days after it received the Tenant's forwarding address in writing.

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 comply with section 38(1) of the *Act*, I dismiss the Tenant's claim for double the security deposit that was paid.

The evidence shows that the Landlord failed to complete a Condition Inspection Report at the end of the tenancy, as is required by section 35(1) of the *Act*. Section 67 of the *Act*, however, only authorizes me to compensate parties for damages or loss that results from the other party not complying with the *Act* or the tenancy agreement. In these circumstances, the money the Tenant paid to have the rental unit cleaned at the end of the tenancy is not related to the Landlord's failure to comply with any part of the *Act* or the tenancy agreement, and I therefore dismiss the Tenant's application for compensation for the cost of cleaning the rental unit.

Section 25(2) of the *Residential Tenancy Regulation* authorizes Landlords to dispose of personal property that is left behind after the tenancy ended if the property has a total market value of less than \$500.00. As the shower curtain, the empty water bottles, and the pair of sandals that were left in the rental unit after the tenancy ended had a market value of less than \$500.00, I find that the Landlord had the right to dispose of those items. As the Landlord had the right to discard them, I hereby dismiss the Tenant's claim for compensation for the missing items.

The *Act* does not authorize me to compensate either party for administrative costs associated to participating in dispute resolution proceedings, with the exception of the cost of filing an Application for Dispute Resolution. On this basis, I dismiss the Tenant's application for compensation for the cost of photocopying documents, in the amount of \$13.30.

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.

I find that the Tenant's application was without merit, and I dismiss his application to recover the filing fee for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,407.50, which is comprised on \$1,200.00 for painting the rental unit; \$63.00 for cleaning the carpet; \$94.50 for reprogramming the combination lock; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

The Landlord is holding the Tenant's security deposit in the amount of \$900.00. I find that this security deposit has accrued interest, in the amount of \$27.81. I hereby authorize the Landlord to retain the security deposit plus interest, in the amount of \$927.81, 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 balance of amount \$479.69. In the event that the Tenant does not voluntarily 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 18, 2009.

Dispute Resolution Officer