



DECISION

Dispute Codes:

MND, 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, 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 Landlord and the Tenant with the initials "K.O." 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 questions, and to make submissions to me.

The Landlord stated that he sent copies of the Application for Dispute Resolution and Notice of Hearing to the Tenant with the initials "D.P.", via registered mail, at the service address noted on the Application, on July 31, 2009. A Canada Post receipt with a tracking number was submitted in evidence. The Canada Post website shows the mail was refused by the recipient on August 29, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however this Tenant was not represented 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 undisputed evidence is that the Tenant with the initials "K.O." and another individual entered into a tenancy agreement with the Landlord; that the tenancy began on August 01, 2007; that the Tenant was required to pay rent of \$2,000.00 per month; that she paid a security deposit of \$1,000.00 on July 27, 2007; that the tenancy with this Tenant

ended on May 29, 2009; and that the Landlord did not schedule a condition inspection with the Tenant at the end of her tenancy.

The undisputed evidence is that the Tenant with the initials "D.P.." entered into a fixed term tenancy agreement with the Landlord on May 29, 2009 that was scheduled to end on August 31, 2009; that this Tenant had been living in the rental unit for approximately one year prior to May 29, 2009; that the Landlord was not aware she was living in the rental unit prior to May 29, 2009; and that she did not pay a security deposit to the Landlord at any time during her tenancy.

The undisputed evidence is that the Tenant provided the Landlord with her forwarding address, in writing, on July 26, 2009; that she did not authorize the Landlord to retain any portion of her security deposit; that the Landlord did not return any portion of her security deposit; and that the Tenant with the initials "DP" paid the Tenant with the initials "K.O." \$300.00 for a portion of the security deposit.

The Landlord is seeking compensation, in the amount of \$1,200.00, to repair and paint the walls in the rental unit. The Landlord stated that the walls in the rental unit were in good condition at the beginning of the tenancy and that he noted they were damaged when he inspected the rental unit on May 29, 2009. The Landlord submitted photographs that show that a closet wall was scraped; that a wall in the living room was scraped; that a closet door was scraped; that shelves had been installed on a wall and that screw holes from the shelving needed to be repaired when the shelves were removed; and that there was a hole in one of the closet doors. The Landlord submitted a receipt that indicates he paid \$1,200.00 to repair the damaged walls and doors, and to paint the entire unit.

The Agent for the Tenant acknowledged that walls and doors had been damaged during this tenancy but he contends that the damage is reasonable wear and tear.

The Landlord is seeking compensation, in the amount of \$126.00, for cleaning the carpet, which he stated was not cleaned at the end of the tenancy. He submitted a receipt that establishes he incurred this expense. The Agent for the Landlord acknowledged that the carpets were dirty and had not been cleaned at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$405.83, for repairing the panel control on the stove in the rental unit. The Landlord stated that the panel control stopped working sometime during the tenancy and he assumes that it was related to "overuse". He submitted no evidence to show that the Tenants misused the stove in any way.

The Agent for the Tenant contends that the stove was not misused and that the stove was subject to normal household use.

Analysis

After hearing the statements of both parties regarding the damaged walls in the rental unit and after viewing the photographs of the damage to the bathroom walls, I find that all of the damage to the walls constitutes reasonable wear and tear. In reaching this conclusion, I was strongly influenced by the minor nature of the damage to the walls that can be seen in the photos, which can be expected during a tenancy of this duration. As tenants are not obligated to repair damage that is the result of reasonable wear and tear, I hereby dismiss the Landlord's application for compensation for repairing and painting the walls.

I find, however, that the hole in the closet door goes beyond reasonable wear and tear, as the hole depicted in the photograph was clearly caused by excessive force. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the hole in the closet door. 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*. As the receipt the Landlord submitted for repairing damages to the walls and closet does not detail the amount that it cost to repair the door, I subjectively determine that the Landlord is entitled to 10% of the amount that he paid to have the walls/doors repaired and painted, which is \$120.00. I find this reasonable compensation given the nature of the damage to the door and the total amount of work that was done in the rental unit.

I find that the Tenants were obligated to clean the carpet at the end of their tenancy and that they failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit 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 Tenants' failure to comply with the *Act*, which in these circumstances is \$126.00 for cleaning the carpet.

After hearing the statements of both parties regarding the broken panel control for the stove, I find that the Landlord submitted insufficient evidence to establish that the Tenants damaged the stove by their actions or through neglect. In reaching this conclusion, I noted that appliances frequently malfunction even when they are subject to general use and there is nothing to indicate that these Tenants used the stove in a manner that exceeds normal use. As tenants are not obligated to repair damage that is the result of reasonable wear and tear, I hereby dismiss the Landlord's application for compensation for repairing the stove.

As the Landlord was only partially successful in his Application, I find that he is only entitled to recover fifty percent of the fee that he paid to file this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$271.00, which is comprised of \$246.00 in damages and \$25.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain \$271.00 from the security deposit paid by the Tenant with the initials "K.O." and I find that he must return the remaining amount of \$729.00 plus interest of \$21.62 to her. On this basis, I grant the Tenant with the initials "K.O." a monetary Order in the amount of \$750.62. In the event that the Landlord does not voluntarily 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*.

Dated: November 20, 2009.

Dispute Resolution Officer