

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of all or part of the security deposit and to recover the fee for filing this 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, 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 in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for unpaid rent and damage to the rental unit; whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; and whether the Landlord is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to the return of 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.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 22, 2009; that the Tenant was required to pay rent of \$1,350.00 on the first day of each month; and that the Tenant paid a security deposit of \$675.00.

The Landlord and the Tenant agree that on January 15, 2010 the Landlord served the Tenant with a One Month Notice to End tenancy for Cause, which had a declared effective date of February 22, 2010, and that the Tenant vacated the rental unit on January 31, 2010. The Tenant stated that she vacated the rental unit on January 31, 2010 because she believed it would be difficult to find a new rental unit on the declared effective date of the Notice to End Tenancy, as most tenancies do not begin on the twenty-second day of the month.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not return any portion of the security deposit; and that the Tenant provided the Landlord with her forwarding address, in writing, on January 31, 2010.

The Landlord and the Tenant agree that the Tenant did not pay rent for February of 2010. The Landlord is only seeking compensation for unpaid rent from February of 2010, in the amount of \$675.00, even though rent for the month is \$1,350.00.

The Landlord is claiming compensation, in the amount of \$60.00, for the cost of cleaning the carpet at the end of the tenancy. The tenancy agreement stipulates that the carpet must be cleaned at the end of the tenancy. The Tenant agreed to pay the \$60.00 fee for cleaning the carpet.

The Landlord is claiming compensation, in the amount of \$2.50, to replace a light bulb that had burned out in the kitchen during this tenancy. Both parties submitted a copy of a Condition Inspection Report that was completed at the end of the tenancy, in which there is no indication that a light bulb was burned out in the kitchen. The Tenant stated that she does not recall a light bulb being burned out in the kitchen and the male Landlord stated that the light bulb was not noticed until after the Condition Inspection Report was completed.

The Landlord is claiming compensation, in the amount of \$0.75, to replace a light bulb that had burned out in the bathroom. The Tenant acknowledged that one bulb had burned out in the bathroom. The Landlord did not submit evidence to corroborate the claim that it cost \$0.75 to replace the light bulb.

The Landlord is claiming compensation, in the amount of \$3.90, to replace one key to the rental unit. The Landlord and the Tenant agree that the Tenant was given six keys at the beginning of the tenancy and that she returned six keys at the end of the tenancy. The male Landlord stated that one of the keys that were returned did not belong to the rental unit and he is seeking compensation for the cost of replacing one of the missing keys. The Tenant contends that she returned all of the keys to the rental unit.

Analysis

The evidence shows that this Tenant was required to pay monthly rent of \$1,350.00 on the first day of each month; that on January 15, 2010 she was served with a One Month

Notice to End Tenancy that declared her tenancy would end on February 22, 2010; and that she vacated the rental unit on January 31, 2010.

Section 47(2) of the *Act* stipulates that a landlord may end a tenancy by providing the tenant with a notice to end tenancy that is effective on a date that is not earlier than one month after the date the tenant receives the notice and is the day before the date that rent is due. Section 53 of the *Act* stipulates that if a landlord gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was served on January 15, 2010 was February 28, 2010. Therefore, I find that the Notice to End Tenancy that was served effectively ended this tenancy on February 28, 2010.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. Although the Tenant vacated the rental unit on January 31, 2010, I find that she remained obligated to pay rent for February of 2010 as the tenancy should have continued until that date. In these circumstances the Landlord is only seeking compensation for rent from February in the amount of \$675.00, and I find that the Tenant must pay this amount of rent.

As the Tenant agreed to pay \$60.00 to clean the carpet, I find that the Landlord is entitled to compensation in this amount.

I find that the Landlord submitted insufficient evidence to establish that a kitchen light bulb had burned out at the time this tenancy ended. In reaching this conclusion I was strongly influenced by the Condition Inspection Report that was completed at the end of the tenancy, which does not specify a light bulb was burned out in the kitchen. I was further influenced by section 21 of the *Residential Tenancy Regulation*, which stipulates that the Condition Inspection Report is evidence of the state of the repair and condition of the rental unit at the end of the tenancy unless there is a preponderance of evidence to the contrary. I do not find that there is a preponderance of evidence to show that the light bulb was burned out and I therefore conclude that the Landlord has failed to establish that the Tenant must pay to replace the light bulb. On this basis, I dismiss the Landlord's claim for \$2.50 to replace the light bulb.

Based on the undisputed evidence at the hearing, I find that the Tenant failed to comply with section 37 of the *Act* when she failed to replace a light bulb that had burned out in the washroom during this tenancy. In addition to establishing that a tenant did not replace light bulbs at the end of a tenancy, a landlord must also accurately establish the cost of replacing the light bulb whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the light bulb. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's claim that the light bulb cost \$0.75. On this basis, I hereby dismiss the Landlord's claim for compensation for replacing one light bulb.

There is a general legal principle that 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 Tenant did not return all six keys to the rental unit. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the male Landlord's statement that one of the keys returned did not belong to the rental unit and that refutes the Tenant's testimony that all keys returned to the Landlord were from the rental unit. On this basis, I dismiss the Landlord's application for compensation for copying one key.

Section 38(1) of the *Act* stipulates that within fifteen 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 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 has not repaid the security deposit and the Landlord did not file an Application for Dispute Resolution claiming against the security deposit within fifteen days of the end of the tenancy.

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.

I find that the Application for Dispute Resolution filed by each party has some merit and I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$735.00, which is comprised of \$675.00 in unpaid rent and \$60.00 for cleaning the carpet.

I find that the Tenant has established a monetary claim, in the amount of \$1,350.00, which is comprised of double the security deposit.

After offsetting the two monetary awards, I find that the Landlord must pay the Tenant the difference of \$615.00 and I grant the Tenant a monetary Order for that amount. 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*.

Dated: July 21, 2010.

Dispute Resolution Officer