

DECISION

Dispute Codes:

MND, MNDC, MNSD and FF

Introduction

This hearing was in response to an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit; to retain the security deposit; and to recover the filing fee from the Tenant for the cost of filing this application.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant, via registered mail, at the service address noted on the Application, on April 16, 2010. The Landlord submitted a copy of Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that the service address was provided as a forwarding address by the tenants at the end of the tenancy. These documents are deemed to have been served on the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the female Tenant did not appear at the hearing.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant, via registered mail, at the service address noted on the Application, on April 16, 2010. The Landlord submitted a copy of Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that the service address was provided as a forwarding address by the tenants at the end of the tenancy. These documents are deemed to have been served on the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to compensation for damage done to the rental unit and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord stated that this tenancy began on June 01, 2008; that a Condition Inspection Report was completed at that time; that the Condition Inspection Report indicated that the rental unit was in good condition at the beginning of the tenancy, although it required painting; that the rental unit was painted in June of 2008; that the Tenants were required to pay monthly rent of \$947.00 during the latter portion of the tenancy; that the Tenants paid a security deposit of \$447.50 on June 01, 2008; that the security deposit has not been repaid; that the tenancy ended on August 31, 2009; and that a Condition Inspection Report was completed on August 28, 2009.

A copy of the Condition Inspection Report was submitted in evidence, which appears to have been signed by the female Tenant on August 28, 2009. The female Tenant appears to have signed the Report beside the section that reads: "I agree with the amounts noted above, and authorize the deduction of the Total Charges from my security deposit". The Agent for the Landlord acknowledged that the total charges are not listed on the Condition Inspection Report, as the agent did not know the cost of the repairs and cleaning.

The Landlord is claiming compensation, in the amount of \$40.00, for general cleaning costs and \$87.41 for cleaning the blinds. The Condition Inspection Report indicates that the blinds in the living room needed cleaning and that general cleaning was required in the rental unit. The Landlord submitted photographs of the rental unit that demonstrate cleaning was needed. The Landlord submitted receipts to establish that \$127.41 was paid for cleaning.

The Landlord is claiming compensation, in the amount of \$770.00 for painting the rental unit. The Condition Inspection Report indicates that the rental unit required painting at the end of the tenancy. The Landlord submitted photographs of the rental unit that demonstrate painting was needed. The Landlord submitted a copy of an invoice, dated August 31, 2009, in the amount of \$1,240.00. The invoice was for painting, repairing walls, repairing baseboard heaters, repairing water damage in the bathroom; and repairing kitchen cabinets. The Agent for the Landlord estimates that \$770.00 of this bill was for painting the rental unit.

The Landlord is claiming compensation, in the amount of \$770.00 for repairing the cupboards in the rental unit. The Condition Inspection Report indicates that the kitchen cabinets were damaged at the end of the tenancy. The Landlord submitted photographs of the cabinets that demonstrate they were damaged.

The Landlord submitted a copy of an invoice, dated August 31, 2009, in the amount of \$1,240.00. The invoice was for painting, repairing walls, repairing baseboard heaters, repairing water damage in the bathroom; and repairing kitchen cabinets. The Agent for the Landlord estimates that \$770.00 of this invoice was for painting the rental unit but she was unable to ascertain how much of the remaining portion of the invoice was for repairing the baseboard heaters, how much was for repairing water damage in the

bathroom; and how much was for repairing the kitchen cabinets. The Landlord submitted a copy of an invoice, dated September 14, 2009, in the amount of \$300.00. This invoice specifies that it is for repairing cabinets in the rental unit. The Landlord submitted a copy of an invoice, dated September 09, 2009, in the amount of \$106.40. This invoice specifies that it is for cabinet supplies.

Analysis

Based on the evidence provided by the Landlord, the photographs submitted in evidence, and the Condition Inspection Report that was submitted in evidence, I find that I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit unreasonably 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 Tenant's failure to comply with the *Act*, which in these circumstances is \$87.41 for cleaning the blinds and \$40.00 for general cleaning.

Based on the evidence provided by the Landlord, the photographs submitted in evidence, and the Condition Inspection Report that was submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the walls that were damaged during this 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*. In the absence of evidence to the contrary, I accept the Agent for the Landlord's estimate that \$770.00 of the money paid to the individual who completed a variety of repairs in the rental unit was paid for the purposes of repairing and painting walls, and I find that the Landlord is entitled to compensation in this amount.

Based on the evidence provided by the Landlord, the photographs submitted in evidence, and the Condition Inspection Report that was submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the kitchen cabinets that were damaged during this 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*.

In addition to establishing that the Tenants damaged the cabinets, the Landlord must also accurately establish the cost of repairing the damage whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish which portion of the \$1,240.00 invoice, dated August 31, 2009, related to repairs to the cabinets and which portion of the invoice related to other repairs in the rental unit. I find that I have insufficient information to determine how much the Landlord paid for repairs to the cabinets on August 31, 2009 and I therefore am unable to award Landlord compensation for costs arising from that invoice. I find that the Landlord has established that it was billed \$300.00 for repairing the cabinets on September 14, 2009, and I find that the Landlord is entitled to compensation in this amount for repairing the cabinets. I find that the Landlord has established that it was

billed \$106.40 for supplies related to repairing the cabinets on September 04, 2009, and I find that the Landlord is entitled to compensation in this amount for repairing the

On the basis of the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants paid a security deposit of \$447.50; that the tenancy ended on August 31, 2009; that the Tenants provided the Landlord with a forwarding address on August 28, 2009; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; that the Landlord did not file an Application for Dispute Resolution claiming against the deposit until April 14, 2010; and that the Landlord did not have authorization to retain any portion of it.

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 has not repaid the security deposit or it did not file an Application for Dispute Resolution within the legislated time period.

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 of \$3.92.

Section 38(4) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant. In these circumstances, I find that the Tenants did not provide the Landlord with written authorization to deduct any amount from their security deposit. I find that the Tenants did authorize the Landlord to retain the "total claims" amount as listed on the Condition Inspection Report, however there is no amount listed in the "total claims" section nor is there an amount listed anywhere else on the report. In effect, the Tenants gave the Landlord authority to deduct \$0.00 from their security deposit.

Conclusion

I find that the Landlord has established a monetary claim of \$1,353.81, which is comprised of \$127.41 for cleaning costs; \$770.00 for painting the walls; \$406.40 for repairing the cabinets; and \$50.00 in compensation for the cost of filing this Application for Dispute Resolution.

I find that the Tenants have a monetary claim of \$898.92, which is comprised of double the security deposit and \$3.92 in interest on the original amount of the security deposit.

After offsetting the two monetary claims, I find that the Tenants owe the Landlord \$454.89 and I am issuing a monetary Order in that amount. In the event that the Tenants do not voluntarily comply with this Order, it may be 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 23, 2010.

Dispute Resolution Officer