



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On June 18, 2010 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; for a monetary Order for unpaid rent; a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On May 20, 2010 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and for the return of all or part of the security deposit.

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.

The Tenant submitted a package of evidence to the Residential Tenancy Branch and also served a copy of that evidence on the Landlord. The Landlord acknowledged receipt of this evidence.

The Landlord submitted a package of evidence to the Residential Tenancy Branch and served a copy of that evidence on September 21, 2010, via registered mail, to the service address provided by the Tenant. The Landlord stated that the package was returned by Canada Post with a notation that indicates the postal box associated to the service address has been closed. The Tenant acknowledged that the post box he provided as a service address has been closed and that he does not currently have a residential or a mailing address.

I find that the Landlord's evidence was served on the Tenant by sending it registered mail to a forwarding address provided by the Tenant, which complies with section 88(d) of the *Act*, and I considered this evidence during the hearing. The Tenant did not oppose proceeding with the hearing, as he stated that he wished to conclude the matter

in a timely manner. Any of the Landlord's evidence referred to at the hearing was described to the Tenant or read out at the hearing.

Part way through the hearing the Tenant requested an adjournment to provide him with an opportunity to obtain evidence to support his belief that the rental unit represented a health hazard. The request for adjournment was denied due to the fact that the Tenant filed the Application for Dispute Resolution on May 20, 2010 and they have had ample opportunity to prepare for these proceedings.

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 retain all or part of the security deposit paid by the Tenant; to compensation for damages to the rental unit; for compensation for unpaid rent from April of 2010; and 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 compensation for moving from the rental unit.

Background and Evidence

The Landlord submitted a copy of a residential tenancy agreement and the Tenant submitted the first two pages of this agreement. The tenancy agreement indicates that the parties entered into a tenancy that began on April 01, 2009; that the Tenant was required to pay monthly rent of \$1,650.00 on the first day of each month; and that the Tenant paid a security deposit of \$825.00 on March 11, 2009. The Landlord acknowledged that it did not have permission to retain any portion of the Tenant's security deposit and that none of the deposit has been repaid.

The Landlord and the Tenant agree that there was a flood in the rental unit in March of 2010. The Tenant stated that the flood was reported to the Landlord approximately three days after the flood and the Landlord stated that it was reported on March 16, 2010. The Landlord submitted documentation from a plumber who stated that he found an obstruction of twigs and roots approximately 45 feet down the sewer line; that the obstruction was on city property, and that the problem was remedied on March 17, 2010.

The Tenant agreed that a plumber unclogged the sewer line on March 17, 2010 but he contends that the line was broken and in need of repair and that the line was plugged on the Landlord's property. He stated that he based his belief that the line was broken on the fact that a hole developing in the yard of the rental unit and that it is commonly known that a pipe is broken if it is clogged with roots. He acknowledged that the rental unit did not flood after the plumber had made repairs on March 17, 2010. He stated that he and his family became "deliriously ill" after the flood, which caused him to believe

that the plumbing represented a health hazard. He stated that he also became concerned about mould in the rental unit, given that the walls had been soaked with sewage, although the unit was dried shortly after the flood occurred. The Tenant submitted no evidence to corroborate his statement that the flood or plumbing system caused the illness experienced by his family or that the rental unit posed a health risk.

The Landlord and the Tenant agree that sometime between March 20, 2010 and March 25, 2010 the Tenant provided the Landlord with written notice of their intent to vacate the rental unit on April 01, 2010. The parties agree that the Tenant vacated the rental unit on April 03, 2010. The parties agree that the Tenant provided the Landlord with their forwarding address, in writing, on April 14, 2010.

The Landlord is seeking compensation for rent for April of 2010, as the Tenant did not provide proper notice to vacate the rental unit on April 01, 2010. The Landlord is also claiming compensation, in the amount of \$93.86, for hydro and gas costs that were incurred after April 03, 2010. The Tenant agreed that he was responsible for paying his own gas and hydro expenses. He stated that he paid all of the hydro and gas bills that were incurred during his tenancy.

The Landlord and the Tenant agree that the Landlord did not complete a Condition Inspection Report at the beginning of the tenancy, as is required by sections 23 of the *Act*. The Landlord and the Tenant agree that the Landlord did not complete a Condition Inspection Report at the end of the tenancy in the presence of the Tenant, as is required by sections 35 of the *Act* and that the Landlord did not provide the Tenant with written notice of when the rental unit would be inspected at the end of the tenancy, as is required by section 17 of the *Regulations*.

The Tenant is seeking compensation for costs associated to moving out of the rental unit, due to his belief that the rental unit was unsafe to occupy. The Agent for the Landlord stated that the rental unit is not unsafe and that it was rented to new tenants in June of 2010 and that those tenants have not expressed any concern about the state of the rental unit.

The Landlord is claiming compensation, in the amount of \$147.89, for repairing damage to the front door. The Landlord is seeking compensation for four hours of labour, at a rate of \$35.00 per hour, for repairing the door plus \$7.89 for supplies. The Landlord contends that the door was in good condition at the beginning of the tenancy and the Landlord submitted photographs to show the condition of the door at the end of the tenancy. The Landlord submitted a receipt to show that he paid \$7.89 for supplies to repair the door.

The Tenant stated that the door was damaged when his father fell into the door while cleaning up after the flood in March of 2010.

The Landlord is claiming compensation, in the amount of \$342.83, for repairing a bedroom door. The Landlord is seeking compensation for five hours of labour, at a rate

of \$35.00 per hour, for repairing the door plus \$167.83 for supplies. The Landlord contends that the door was in good condition at the beginning of the tenancy and the Landlord submitted photographs to show that paint had been scraped from the door and the door was hanging from one hinge.

The Tenant stated that the screws used to attach the hinge to the door were too long and were not adequate to secure the hinge to the door, which resulted in the hinge detaching from the door. He stated that he had permission from the Landlord to refinish the door and other woodwork in the rental unit; that the paint was scraped off the door in preparation for refinishing the door; and that he had not had time to finish the door before he moved out of the unit. The Agent for the Landlord agreed that the Tenant had permission to refinish the door but the Landlord contends that the Tenant had an obligation to complete the refinishing once he removed the paint.

The Landlord is claiming compensation, in the amount of \$35.00, for reattaching a smoke alarm to the ceiling. The Landlord is seeking compensation for one hour of labour, at a rate of \$35.00 per hour, for repairing the smoke alarm. The Landlord contends that the smoke alarm was properly attached to the ceiling at the beginning of the tenancy and the Landlord submitted photographs to show that smoke alarm was missing at the end of the tenancy.

The Tenant stated that the smoke alarm was missing at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$120.04, for replacing blinds in the rental unit. The Landlord is seeking compensation for two hours of labour, at a rate of \$35.00 per hour, for replacing the blinds plus the cost of the blinds. The Landlord contends that the blinds were in good condition at the beginning of the tenancy and the Landlord submitted photographs to show that two sets of blinds were damaged at the end of the tenancy.

The Tenant stated that the blinds were damaged at the beginning of the tenancy, although they did not notice it as the blinds were fully raised when they took possession of the unit.

The Landlord is claiming compensation, in the amount of \$175.00, for repairing holes in the wall and ceiling plus \$85.54 for repairing holes in the living room wall. The Landlord contends that the Tenant installed two hooks in the ceiling and many nail holes in the walls downstairs and in the living room. The Landlord submitted photographs to show two hooks had been installed in the ceiling. The Landlord also submitted a DVD, which could not be viewed at the time of the hearing, which the Landlord contends demonstrates that an inordinate number of holes in the walls, which are typical of holes made by tacks and/or nails.

The Tenant stated that there were many holes in the walls at the beginning of the tenancy and that he is not responsible for making any new holes, with the exception of the two hooks in the ceiling.

The Landlord is claiming compensation, in the amount of \$700.00, for the twenty hours that were spent cleaning the rental unit. The Landlord submitted photographs to show that the rental unit required significant amount of cleaning.

The Tenant agreed that the rental unit needed cleaning at the end of the tenancy however he contends that it was cleaner at the end of the tenancy than it was at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$176.20, for replacing carpet in one of the rooms. The Landlord contends that the Tenant removed the carpet and was going to restore the floor, but that the floor was not refinished. The Agent for Landlord stated that they just replaced the original carpet, for which the Landlord is seeking compensation for two hours of labour.

The Tenant agreed that he removed the carpet for the purposes of refinish the floor in that room but that he did not have time to refinish the flooring.

The Landlord is claiming compensation, in the amount of \$191.11, for replacing a sink in the downstairs bathroom. The Landlord contends the sink was in good condition at the beginning of the tenancy. The Landlord submitted a photograph to show that the sink is cracked.

The Tenant stated that the sink in the downstairs bathroom was cracked at the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$436.11, for repainting the hall and the kitchen. The Landlord contends that the kitchen and the hallway had been painted just before this tenancy began. The Landlord submitted a photograph that shows a small amount of dirt on the wall beside the stove. The Landlord also submitted a DVD, which could not be viewed at the time of the hearing, which the Landlord contends demonstrates that the kitchen and hall needed repainting at the end of the tenancy.

The Tenant agreed that the kitchen and hallway needed repainting however he stated that these areas needed repainting prior to the beginning of the tenancy.

The Landlord is claiming compensation, in the amount of \$84.00, for unclogging a drain in the upstairs sink. The Tenant agreed that the sink became clogged during this tenancy, which he attributed to normal wear and tear and a history of plumbing problems in the unit. The Landlord submitted no evidence to show that the sink became clogged due to misuse or neglect by the Tenant.

Analysis

The undisputed evidence is that the Tenant entered into a tenancy agreement that required them to pay \$1,650.00 in rent to the Landlord on the first day of each month and that they paid a security deposit of \$825.00.

The undisputed evidence is that sometime after March 20, 2010 the Tenant provided the Landlord with written notice of their intent to vacate the rental unit on April 01, 2010. Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

To end this tenancy on March 31, 2010 in accordance with section 45 of the *Act*, the Tenant was required to give notice of their intent to vacate on, or before, February 28, 2010. Section 53 of the *Act* stipulates that if a tenant 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 given in March of 2010 was April 30, 2010. Therefore, I find that the notice to end tenancy that was given in March of 2010 served to end this tenancy on April 30, 2010.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenant had not properly ended this tenancy by April 01, 2010, I find that the Tenant was obligated to pay rent when it was due on April 01, 2010. As the Tenant did not pay rent when it was due on April 01, 2010, I find that the Tenant owes the Landlord \$1,650.00 in rent for April of 2010.

Although the Tenant was required to pay rent for April 01, 2010, I find that this tenancy ended on April 03, 2010 when the Tenant returned the keys to the rental unit, pursuant to section 44(1)(d) of the *Act*. I find that the Tenant was not obligated to pay any gas or hydro bills incurred after April 03, 2010 as he did not occupy the rental unit after that date and did not incur any expenses after that date. On this basis, I dismiss the Landlord's application for compensation for any utility costs that were incurred after April 03, 2010.

I find that the Tenant submitted insufficient evidence to show that the rental unit was unsafe to occupy after the plumber had unblocked the drains on March 17, 2010. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's suspicion that the plumbing problem caused him and his family to become ill; by the absence of independent evidence that shows the sewer line was not functioning properly after the lines had been repaired by a plumber; by the evidence from a plumber who indicated the problem had been rectified; and by the Landlord's evidence that the current tenant has not reported any concerns with the rental unit. As the Tenant has not established that he was forced to vacate the rental unit due to health or safety concerns, I find that the Landlord is not obligated to compensate the Tenant

for any of the costs associated to his decision to vacate the rental unit. On this basis, I dismiss the Tenant's claim for compensation for moving costs.

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 and the Landlord did not file an Application for Dispute Resolution until June 18, 2010, which is more than fifteen days after the tenancy ended and more than fifteen days after the Landlord received a forwarding address for the Tenant.

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.

Based on the Tenant's admission that the front door was damaged during this tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the damage to the 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*. Based on the receipt submitted in evidence by the Landlord, I find that the Landlord paid \$7.89 for supplies to repair the door and I find that the Landlord is entitled to recover this cost. I accept the Landlord's evidence that it took four hours labour to repair the door and I find that the Landlord is entitled to compensation for that time, in the amount of \$80.00. The award of \$80.00 is based on an hourly rate of \$20.00, which I find is reasonable compensation for labour of this nature.

Based on the Tenant's admission that he removed paint from a door but did not complete the restoration, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the door in the same condition it was in at the beginning 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*. In these circumstances, I find that the Tenant was only obligated to repaint the door.

In determining that the Tenant was not also obligated to fix the broken hinge, I find that the Landlord has submitted insufficient evidence to show that the hinge was properly attached to the door at the beginning of the tenancy. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the door was in good condition on April 01, 2009 or that refutes the Tenant's testimony that the hinge was improperly attached at the beginning of the tenancy.

Based on the photograph of the bedroom door that was submitted in evidence, I find that the Landlord is entitled to compensation for the time it would take to repaint the door, which I estimate to be two hours. I find that the Landlord is entitled to compensation for that time, in the amount of \$40.00. The award of \$40.00 is based on an hourly rate of \$20.00, which I find is reasonable compensation for labour of this nature.

I further find that the Landlord is entitled to compensation for the cost of paint used to paint the door. Receipts submitted in evidence show that the Landlord purchased a variety of paint and that it paid \$24.91 for a can of "Alkyd" paint. I find that the Landlord is entitled to compensation in this amount for materials used to paint the bedroom door.

After hearing the conflicting evidence regarding whether the smoke alarm was attached to the ceiling at the beginning of the tenancy, I find that the Landlord submitted insufficient evidence to show that the smoke alarm was attached to the ceiling on April 01, 2009. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the smoke alarm was functional on April 01, 2009 or that refutes the Tenant's testimony that the smoke alarm was not attached at the beginning of the tenancy.

As the Landlord has failed to establish that the smoke alarm was functional at the start of the tenancy, I cannot conclude that the Tenant damaged the smoke alarm. As it has not been established that the Tenant damaged the smoke alarm, I cannot conclude that the Tenant was obligated to repair the smoke alarm. On this basis, I dismiss the Landlord's claim for compensation for replacing the smoke alarm.

After hearing the conflicting evidence regarding the blinds, I find that the Landlord submitted insufficient evidence to show that the blinds were in good condition on April 01, 2009. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the blinds were in good condition on April 01, 2009 or that refutes the Tenant's testimony that the blinds were damaged at the beginning of the tenancy.

As the Landlord has failed to establish that the blinds were in good condition at the start of the tenancy, I cannot conclude that the Tenant damaged the blinds. As it has not been established that the Tenant damaged the blinds, I cannot conclude that the Tenant was obligated to repair the blinds. On this basis, I dismiss the Landlord's claim for compensation for replacing the blinds.

After hearing the conflicting evidence regarding the condition of the walls, I find that the Landlord submitted insufficient evidence to show that the walls were in good condition on April 01, 2009. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the walls

were in good condition on April 01, 2009 or that refutes the Tenant's testimony that the walls had many holes in them at the beginning of the tenancy.

As the Landlord has failed to establish that the walls and ceiling were in good condition at the start of the tenancy, I cannot conclude that the Tenant damaged the walls or ceiling, beyond what is considered reasonable wear and tear. I find that the two hooks that the Tenant admitted to placing in the ceiling caused minimal damage and should be considered reasonable wear and tear. As it has not been established that the Tenant damaged the walls or ceiling, with the exception of reasonable wear and tear, I cannot conclude that the Tenant was obligated to repair the walls or ceiling. On this basis, I dismiss the Landlord's claim for compensation for repairing holes in the walls and ceiling.

After viewing the photographs of the rental unit, I find that the Tenant 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 find that section 37(2) of the *Act* requires a Tenant to clean the unit regardless of whether or not the unit was clean at the beginning of the tenancy. Had the rental unit not been properly cleaned at the beginning of the tenancy, the Tenant had the right to seek compensation for the time they spent cleaning the rental unit at the start of the tenancy.

I find that the Landlord is entitled to compensation for the twenty hours spent cleaning time, in the amount of \$400.00. The award of \$400.00 is based on an hourly rate of \$20.00, which I find is reasonable compensation for labour of this nature.

Based on the Tenant's admission that he removed carpet from one room but did not refinish the flooring underneath the carpet, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the flooring in the same condition it was in at the beginning 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*. In these circumstances, I find that the Tenant was only obligated to replace the carpet he removed.

I find that the Landlord is entitled to compensation for the two hours spent replacing the carpet, in the amount of \$40.00. The award of \$40.00 is based on an hourly rate of \$20.00, which I find is reasonable compensation for labour of this nature.

After hearing the conflicting evidence regarding the bathroom sink, I find that the Landlord submitted insufficient evidence to show that the sink was in good condition on April 01, 2009. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the sink was in good condition on April 01, 2009 or that refutes the Tenant's testimony that the sink was cracked at the beginning of the tenancy.

As the Landlord has failed to establish that the sink was in good condition at the start of the tenancy, I cannot conclude that the Tenant damaged the sink. As it has not been established that the Tenant damaged the sink, I cannot conclude that the Tenant was obligated to repair the sink. On this basis, I dismiss the Landlord's claim for compensation for replacing the sink.

After hearing the conflicting evidence regarding the kitchen and hallway walls, I find that the Landlord submitted insufficient evidence to show that these areas were newly painted at the beginning of the tenancy. In reaching this conclusion I was heavily influenced by the absence of a Condition Inspection Report that was completed at the beginning of the tenancy or other documentary evidence that corroborates the Landlord's assertion that the walls were newly painted or that refutes the Tenant's testimony that they needed painting at the beginning of the tenancy.

As the Landlord has failed to establish that the walls were newly painted at the start of the tenancy, I cannot conclude that the Tenant damaged the walls beyond reasonable wear and tear. As it has not been established that the Tenant damaged the walls beyond reasonable wear and tear, I cannot conclude that the Tenant was obligated to repaint the walls in the kitchen or hallway. On this basis, I dismiss the Landlord's claim for compensation for repainting the kitchen and hallway.

Section 32 of the Act only requires tenants repair damage that is caused by the actions or neglect of a tenant or a guest of the tenant but does not require them to repair repairs that are needed due to reasonable wear and tear. In regards to the Landlord's claim for compensation for unclogging a bathroom drain, I find that the Landlord failed to establish that the sink was subject to anything other than normal daily use. I therefore find that the Tenant was not obligated to unclog this sink and I dismiss the Landlord's claim for compensation for unclogging the sink.

I find that the applications of both parties have merit and that they are, therefore, obligated to pay their own costs for filing an Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,650.00, which represents the return of double the security deposit paid by the Tenants.

I find that the Landlord has established a monetary claim, in the amount of \$2,242.80, which is comprised of \$1,650.00 in rent that was due on April 01, 2010; \$400.00 in cleaning costs; and \$192.80 for damages to the rental unit.

After offsetting these two monetary awards, I find that the Tenant owes the Landlord \$592.80 and I grant a monetary Order for that amount. 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: October 06, 2010.

Dispute Resolution Officer