



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's 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 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.

The male Tenant and the Landlord 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 oral evidence, to cross-examine the other party, and to make submissions to me.

The male Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant, by mail, at the address noted on the Application, on May 31, 2010. The male Tenant acknowledged that each Tenant received copies of the Application for Dispute Resolution and Notice of Hearing by registered mail. These documents are deemed to have been served to the female Tenant in accordance with section 89 of the *Act*, however she did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenants; to compensation for damages to the rental unit; 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 July 01, 2007; that the rental unit is between 900 and 1,000 square feet; that the Tenants paid a security deposit of \$360.00 on June 14, 2007; that the Tenants were required to pay monthly rent of \$770.00 during the latter portion of this tenancy; and that the tenancy ended on March 31, 2010.

The male Landlord stated that the female Tenant provided her forwarding address, by telephone, on May 19, 2010 and that neither Tenant provided a forwarding address in writing. This is not disputed by the male Tenant.

The Landlord and the Tenant agree that a Condition Inspection Report was completed at the beginning of the tenancy. The female Agent for the Landlord stated that she believes another agent for the Landlord submitted a copy of this report in evidence, however I do not have a copy of this report before me and the Tenant stated that he was not served a copy of that report.

The female Agent for the Landlord stated that a Condition Inspection Report was completed at the end of the tenancy, in the absence of either Tenant. The female Agent for the Landlord stated that she believes another agent for the Landlord submitted a copy of this report in evidence, however I do not have a copy of this report before me and the Tenant stated that he was not served a copy of that report.

The Landlord is claiming compensation, in the amount of \$590.00, for cleaning the rental unit. The Landlord submitted photographs that demonstrate some walls in the rental unit needed cleaning; that the fridge and stove needed cleaning; that the medicine cabinet needed cleaning; that the linoleum floor needed cleaning; that gun needed to be cleaned from the carpet; and that the bedroom window sill needed cleaning. The female Agent for the Landlord stated that the photographs represented the general cleaning that was needed in the rental unit.

She stated that she spent 3 hours cleaning the fridge and stove; 8 hours cleaning the walls; 2 hours cleaning the windows; 2.5 hours cleaning the bathrooms; 1.5 hours cleaning fixtures; 5 hours removing gum from the floors and cleaning the floors; 1.5 hours cleaning cupboards; 2 hours cleaning the exterior of the yard; and 4 hours removing garbage from the rental unit. She stated that she spent a significant amount of time attempting to remove gum from the carpet and linoleum and that the flooring was subsequently replaced as her cleaning attempts had damaged the floor.

The Tenant agreed that the Tenants did not clean the rental unit at the end of the tenancy, however he contends that the Landlord's claim that it took 29.5 hours to clean the rental unit is an exaggeration. He argued that the walls did not need to be cleaned as they were painted; that the flooring was replaced so did not need to be cleaned; and that there were only two bags of bagged garbage and a barbecue left in the rental unit, which should not have taken four hours to throw away. He estimates that it should have taken no more than sixteen hours to clean the rental unit.

The Landlord is claiming compensation, in the amount of \$135.50, for cleaning the carpet. The female Agent for the Landlord stated that she believes another agent for the Landlord submitted a copy of the receipt for cleaning the carpet, however I do not have a copy of this report before me and the Tenant stated that he was not served a copy of that report.

The Landlord is claiming compensation, in the amount of \$237.00, for replacing seven blinds in the rental unit. The female Agent for the Landlord stated that all seven blinds were damaged during this tenancy and that they were replaced at a cost of \$22.39 per blind. The Landlord submitted a photograph that demonstrates two blinds were damaged. The Landlord submitted receipts to show that seven blinds were purchased.

The Tenant stated that three blinds in the rental unit were damaged and he agrees that he is responsible for replacing three blinds, at a cost of \$22.39 per blind.

The Landlord is claiming compensation, in the amount of \$80.00, for repairing damaged drywall. The female Agent for the Landlord stated that the drywall was damaged when a bulletin board that had been attached to the wall with adhesive was removed and when a coat rack that had been screwed to the wall was removed. The Landlord submitted photographs that show the damage to the walls. The female Agent for the Landlord stated that the rental unit was last painted in 2005.

The Tenant does not dispute causing this damage to the walls but argued that the rental unit was in need of repainting and that the actual damage to the wall was relatively minor.

The Landlord is claiming compensation, in the amount of \$55.00, for the cost of rekeying locks in the rental unit, due to the fact that the keys to the rental unit were not returned. The female Agent for the Landlord stated that the lock was removed and taken to a locksmith for the purposes of rekeying it. The Landlord is claiming \$29.79 for the cost of rekeying the lock and \$25.00 for the time the Agent for the Landlord spent delivering and retrieving the lockset. The Landlord submitted a receipt to show that it paid \$29.79 to rekey the lock.

The Tenant acknowledged that they forgot to return the keys to the rental unit.

The Landlord is claiming compensation, in the amount of \$45.00, for replacing a smoke detector in the rental unit. The female Agent for the Landlord stated that the smoke detector had been removed from the ceiling in the rental unit and was not located in the rental unit at the end of the tenancy. She stated that the Landlord replaced the smoke alarm with one it had in stock. She stated that the alarm had to be rewired as the new smoke alarm did not fit onto the receiver for the old smoke alarm. She stated that the smoke alarm was repaired in conjunction with a variety of other work in the rental unit, for which an invoice was submitted, although the invoice does not state the amount specifically charged for replacing the smoke alarm.

The Tenant stated that he had removed the smoke alarm because it frequently was activated by steam from the bathroom. He stated that he left it on the floor of the rental unit at the end of the tenancy.

The Landlord is claiming compensation, in the amount of \$60.00, for “repairs”. The nature of those “repairs” is not explained in the Landlord’s Application for Dispute Resolution. At the hearing the female Agent for the Landlord stated that the \$60.00 claim relates to repairs made to window screens.

Analysis

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. 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*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit reasonably clean at the end of the tenancy. I base this conclusion on the photographs submitted in evidence and by the Tenant’s admission that they did not clean the rental unit 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*.

I accept the evidence of the female Agent for the Landlord that she spent 29.5 hours cleaning the rental unit. In reaching this conclusion I was influenced, in part, by the female Agent’s testimony, which appeared credible and forthright, and by the fact that she documented her hours on a work sheet. I was influenced, in part, by the photographs that were submitted in evidence that demonstrate the rental unit required a significant amount of cleaning. I was influenced, in part, by the fact that this rental unit is at least 900 square feet in size and it is not unreasonable that it would take 29.5 hours to clean a unit of that size. I therefore find that the Landlord is entitled to compensation in the amount of \$590.00 for cleaning the rental unit, which is calculated at an hourly rate of \$20.00, which I find to be a reasonable rate.

In reaching this conclusion I placed little weight on the Tenant’s estimate that it should have taken sixteen hours to clean the rental unit. I find that his estimate of the time it should take to clean the rental unit is far less reliable than the Agent for the Landlord’s recollection of the time she actually spent cleaning the rental unit.

In reaching this conclusion I placed little weight on the Tenant’s argument that the walls were being painted so did not need to be cleaned. Based on the photographs of the walls I find that it was entirely reasonable to clean those walls prior to painting.

In reaching this conclusion I placed little weight on the Tenant’s argument that the flooring was replaced so did not need to be cleaned. I find that it was entirely reasonable for the Landlord to attempt to clean the floors before determining that they needed to be replaced.

In reaching this conclusion I placed little weight on the Tenant's argument that it would not take four hours to dispose of a barbecue and two bags of garbage. I do not find it unreasonable to believe that it would take four hours to dispose of a barbecue given that it cannot simply be placed in a garbage can.

As the Tenant acknowledged that the carpet was not cleaned at the end of the tenancy, I find that the Landlord is entitled to claim compensation for the cost of cleaning the carpet. In addition to establishing that the carpet needed cleaning, the Landlord must also accurately establish the cost of cleaning the carpet. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the carpet. In reaching this conclusion, I was strongly influenced by the absence of a receipt that corroborates the Landlord's claim that it paid \$135.50 to clean the carpets. On this basis, I award nominal damages for cleaning the carpet, in the amount of \$1.00.

As the Tenant acknowledged damaging three blinds and he has agreed to compensate the Landlord, in the amount of \$67.17 for the damaged blinds, I find that the Landlord is entitled to compensation in that amount. I find that the Landlord has submitted insufficient evidence to show that the other blinds in the rental unit were damaged and I therefore dismiss the Landlord's claims for compensation for the other blinds. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or other documentary evidence, that corroborates the Agent for the Landlord's testimony that seven blinds were damaged or that refutes the Tenant's testimony that only three blinds were damaged.

Based on the photographs provided in evidence, I find that the damage to the walls that was caused by affixing a bulletin board and a coat rack is relatively minor and constitutes reasonable wear and tear. As the *Act* does not require tenants to repair damage that is due to reasonable wear and tear, I dismiss the Landlord's claim for compensation for repairing the drywall in the rental unit.

As the Tenant acknowledged that the keys to the rental unit were not returned, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to return the keys to the rental unit. 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 Landlord has submitted a receipt to show that it paid \$29.79, I find that it is entitled to compensation in this amount and I also find it reasonable that the Landlord be compensated for the time spent having the lock rekeyed, in the amount of \$25.00.

I find that the Tenant should have replaced the smoke alarm at the end of the tenancy. I find it entirely possible that the Tenant is being truthful when he states that the alarm was left in the rental unit; that the smoke alarm could have been lost when the rental unit was being vacated or cleaned; and that the Agent for the Landlord is being truthful when she stated that the smoke alarm was not located at the end of the tenancy. Although the Tenant alleges that the smoke alarm was left in the rental unit, the Tenants

assumed the risk that the smoke alarm would be lost when they elected not to replace the smoke alarm.

I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to replace the smoke alarm. 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 Landlord has submitted an invoice to show that it paid to replace the smoke alarm. Although the invoice does not specify specifically how much was paid, I find the Landlord's claim of \$45.00 to be reasonable and to be reasonably supported by the labour invoice that was submitted in evidence.

I refuse to consider the Landlord's application for compensation in the amount of \$60.00 for "repairs", pursuant to section 59 of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the nature of this claim. I find that proceeding with the Landlord's claim for compensation for this amount would be prejudicial to the Tenant, as the absence of particulars made it difficult, if not impossible, for the Tenant to adequately prepare a response to the claim when they were not advised, in advance, of the nature of the repairs that were needed.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$807.96, which is comprised of \$757.96 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the Tenants' security deposit of \$360.00 plus interest of \$8.41, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$429.55. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 20, 2010.

Dispute Resolution Officer