



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, OPB, and FF

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit.

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The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession; a monetary Order for money owed or compensation for damage or loss; a monetary Order for unpaid rent or utilities; 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.

At the hearing the Landlord withdrew her application for an Order of Possession, as the rental unit had already been vacated prior to the filing of the Landlord's 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 submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid utilities; whether the Landlord is entitled to compensation for damage to the rental unit; whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2009; that the tenants were required to pay monthly rent of \$1,300.00 plus utilities; that the tenants paid a \$650.00 security deposit and a \$650.00 pet damage deposit; that the Landlord completed a Condition Inspection Report on August 31, 2009; that the tenancy ended on July 25, 2010; that the tenants did not give the Landlord written authorization to retain the security deposit; that the Landlord did not return any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit until January 19, 2011.

The Tenant stated that the Landlord completed Condition Inspection Report on July 25, 2010, although she did not receive a copy of that report. She stated that a few days prior to July 25, 2010 the Landlord scheduled the inspection for "around 11" on July 25, 2010. She stated that she gave the Landlord her forwarding address during that inspection and that the Landlord wrote the address on the Condition Inspection Report. She stated that she also had the Landlord initial her copy of the Condition Inspection Report that was completed at the beginning of the tenancy to show that she had returned her keys to the rental unit.

The Landlord stated that she did not complete a Condition Inspection Report at the end of the tenancy because she was not told when the tenants would be vacating. When asked why she did not arrange a time for an inspection when the keys were returned to her or why she did not simply complete an inspection when the keys were returned to her, she replied that it was because the tenants did not give proper notice.

The Witness for the Tenant, who is a friend of the Tenant and the mother of the co-tenants, was at the rental unit on July 25, 2010. She stated that she is not certain that the Landlord completed a Condition Inspection Report at that time but she observed the landlord inspecting the unit and checking off items on a document. She stated that she does not know if the Landlord or the Tenant signed the document that was being completed. She stated that she was present when the Tenant gave the Landlord her forwarding address and she observed the Landlord write something on her document, which she believed was the forwarding address that had been provided to her.

The Landlord is claiming compensation, in the amount of \$114.29, for utility charges that the tenants were required to pay as a term of this tenancy. The Tenant agrees that the Landlord is due \$114.29 for utilities.

The Landlord is claiming compensation, in the amount of \$200.00, for cleaning the carpets. The Landlord stated that the carpets need to be cleaned twice as the first cleaning did not eliminate the smell of pets in the rental unit. The Landlord submitted a copy of a receipt to show that she paid \$200.00 to have the carpet cleaned twice.

The Tenant stated that she had told the Landlord she could deduct the cost of cleaning the carpet from the security deposit and she is still willing to pay for the cost of the first cleaning. She stated that the rental unit did not smell of pets and she disputes the Landlord's claim for cleaning the carpet a second time. She submitted two photographs of a portion of the carpet in the rental unit, neither of which show that the carpet is stained.

The Landlord is claiming compensation, in the amount of \$120.00 to clean the rental unit. The Landlord stated that the rental unit required some additional cleaning at the end of the tenancy and she submitted a receipt to show that she paid \$120.00 for that cleaning.

The Tenant stated that the rental unit was left in clean condition. She submitted five photographs which show various places within the rental unit.

The Landlord is claiming compensation, in the amount of \$300.00, to repair walls that were "scuffed" during the tenancy. The Landlord submitted a receipt to show that she paid \$300.00 to repair the walls.

The Tenant stated that the walls in the rental unit were in good condition at the end of the tenancy, except for minor wear and tear from hanging pictures.

The Landlord is claiming compensation, in the amount of \$120.00, to repair three blinds that had broken panels. The Landlord stated that one blind in the rental unit had 7 broken panels, one had 4 broken panels, and one had 1 broken panel. The Landlord submitted a receipt to show that she paid \$120.00 to repair the blinds.

The Tenant acknowledged that 7 panels were broken on one blind and one panel was broken on a second blind, but she does not believe a third blind was broken.

The Landlord is claiming compensation, in the amount of \$50.00, to replace five light bulbs that burned out during this tenancy. The Landlord submitted a receipt to show that she paid \$50.00 to replace light bulbs.

The Tenant agreed that there may have been five light bulbs that had burned out during this tenancy.

The Landlord is claiming compensation, in the amount of \$680.00, to pick up dog excrement from the yard of the rental unit and to repair the lawn that was damaged by the excrement. The Landlord submitted a receipt to show that she paid \$680.00 to clean and repair the yard.

The Tenant stated that there may have been a small amount of dog excrement in the yard but she denies that it damaged the lawn in any significant way.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00; that the tenancy ended on July 25, 2010; that the Landlord did not return any portion of the security deposit; that the tenants did not give the Landlord written authorization to retain the deposits; and that the Landlord did not have authorization to retain any portion of it.

I favour the evidence of the Tenant, who stated that a Condition Inspection Report, was completed on July 25, 2010 over the evidence of the Landlord, who stated that a Condition Inspection Report, was not completed on July 25, 2010. I favoured the evidence of the Tenant over the evidence of the Landlord, in part, because the Tenant's evidence was forthright and credible. I find that the Tenant readily acknowledged deficiencies with the rental unit, specifically that the carpets needed cleaning and that some blinds were damaged, even though the Landlord had no proof of these damages. In my view, the Tenant's willingness to admit fault when she could easily have denied these damages lends credibility to all of her evidence.

I favoured the evidence of the Tenant over the evidence of the Landlord, in part, because the Tenant's evidence was supported by a witness, who also appeared forthright and credible. I find that the evidence provided by the Witness for the Tenant was very clear and specific. I note that she acknowledged she did not know if the Landlord completed a Condition Inspection Report but clearly stated that she saw the Landlord checking items on a document as she was inspecting the rental unit. I note that she acknowledged she did not know if the Landlord recorded the Tenant's forwarding address but she observed the Landlord write something down immediately after the Tenant provided her with a forwarding address. In my view, the Witness' attention to detail makes her evidence highly reliable.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's explanation of why she did not complete a Condition Inspection Report to be improbable. Given that the Landlord and the Tenant met on July 25, 2010, at which time the Landlord initialed the Tenant's copy of the Condition Inspection Report that was completed at the start of the tenancy, I find that it would be reasonable for the

parties to inspect the unit at the same time, as was stated by the Tenant. I find that the Landlord's explanation that she could not conduct an inspection on July 25, 2010 or schedule an inspection for another time because she did not know when the tenant were leaving to be improbable given that they were both at the unit when the Tenant vacated. Rather, I find that it is more plausible to believe that the Landlord did complete a Condition Inspection Report on July 25, 2010 and she is now denying that fact because she does not wish to acknowledge that she recorded the Tenant's forwarding address on that document.

For all the aforementioned reasons, I find that the Landlord completed a Condition Inspection Report on July 25, 2010, at which time she received the Tenant's forwarding address, which the Landlord recorded.

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 she did not file an Application for Dispute Resolution until January 19, 2011.

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 and pet damage deposits that were paid.

As the Tenant agreed that the Landlord is entitled to utility charges of \$114.29, I find that the Tenant must pay this amount to the Landlord.

As the Tenant agreed that the Landlord is entitled to compensation for the cost of cleaning the carpet on one occasion and the Landlord submitted a receipt to show that the carpet was cleaned twice, for a cost of \$200.00, I find that the Landlord is entitled to compensation of \$100.00 for one carpet cleaning.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. In regards to the Landlord's claim for compensation for damages to the rental unit, the burden of proving that the rental unit was damaged 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 Landlord has submitted insufficient evidence to show that the carpets needing to be cleaned a second time. In reaching this conclusion I was heavily

influenced by the absence of evidence that corroborates the Landlord's statement that the carpets smelled of urine after the first cleaning, such as a statement from an independent party. In reaching this conclusion I was also influenced by the photographs submitted by the Tenant, that show the carpets, at least in some areas, were not particularly dirty. On this basis, I dismiss the Landlord's claim for compensation for cleaning the carpet a second time.

I find that the Landlord has submitted insufficient evidence to show that the rental unit was not left in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that corroborates the Landlord's statement that the rental unit needed cleaning. In reaching this conclusion I was also influenced by the photographs submitted by the Tenant, that show the rental unit, at least in some areas, was left in very clean condition. On this basis, I dismiss the Landlord's claim for compensation for cleaning the rental unit.

I find that the Landlord has submitted insufficient evidence to show that the walls in the rental unit were significantly damaged during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that show the walls were damaged beyond what is generally considered normal wear and tear. While the Tenant acknowledged marking the walls for the purpose of hanging pictures, I find that this constitutes reasonable wear and tear in a rental unit. As the *Act* does not require tenants to repair damage that is considered reasonable wear and tear, I find that the Tenant is not required to repair the walls in the rental unit. On this basis, I dismiss the Landlord's claim for compensation for repairing the walls.

As the Tenant agreed that 8 panels on two blinds were broken during this tenancy, I find that the Tenant failed to comply with section 32(3) of the *Act* when she failed to repair the broken panels. The evidence shows that the Landlord paid \$120.00 to repair 12 panels, which equates to \$10.00 per panel. I therefore find that the Tenant must pay \$80.00 to the Landlord for repairing eight panels.

As the Tenant agreed that five light bulbs had burned out during this tenancy and were not replaced, I find that the Tenant failed to comply with section 32(3) of the *Act* when she failed to replace the bulbs. The evidence shows that the Landlord paid \$50.00 to replace the bulbs and I therefore find that the Tenant must pay \$50.00 to the Landlord for this expense.

I find that the Landlord has submitted insufficient evidence to show that the yard was damaged by dog excrement during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that show the yard was damaged beyond what is generally considered normal wear and tear for a rental unit that allows pets. As the *Act* does not require tenants to repair damage that is considered reasonable wear and tear, I find that the Tenant is not required to repair the yard. On this basis, I dismiss the Landlord's

claim for compensation for repairing the yard.

While the Tenant acknowledged that there may have been a small amount of dog excrement left in the yard, I find that I have no photographs to help me determine whether or not the yard was not left in reasonably clean condition. As the Act only requires tenants to leave a rental property in reasonably clean condition, I dismiss the Landlord's claim for cleaning dog excrement from the yard.

Conclusion

I find that the Tenant has established a monetary claim of \$2,600.00, which is comprised of double the security deposit and double the pet damage deposit.

I find that the Landlord has established a monetary claim of \$344.19, which is comprised of \$114.29 for utility charges, \$100.00 for cleaning the carpet, \$80.00 for repairing blinds, and \$50.00 for replacing light bulbs.

After offsetting these two monetary claims, I find that the Landlord owes the Tenant \$2,255.81 and I grant the Tenant a monetary Order in this amount. In the event that the Landlord does 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.

As the claims of both parties have some merit, I find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

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: March 21, 2011.

Residential Tenancy Branch