



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNSD 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 and to recover the filing fee from the Landlord for the cost of filing this application.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied to retain a portion of the Tenant's security deposit and to recover the filing fee from the Tenant for the cost of filing this application.

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 are whether the Landlord is entitled to retain any portion of the security deposit, whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and whether either party 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 November 01, 2008 or November 02, 2008, that the Tenant paid a security deposit of \$650.00 on November 02, 2008, that this tenancy ended on November 02, 2010, that a Condition Inspection Report was not completed at the beginning or the end of this tenancy, that the Tenant provided the Landlord with a forwarding address, in writing, on October 31, 2010, that the Tenant did not authorize the Landlord to retain any portion of the security deposit, that the Landlord returned \$456.00 of the security deposit sometime after November 17, 2010, and that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit until sometime in March of 2011.

The Landlord has applied to retain \$61.59 from the Tenant's security deposit in compensation for replacing a garage door opener. The female Landlord stated that the Tenant was provided with a garage door opener by an agent for the Landlord at the beginning of the tenancy but that the opener was not returned at the end of the tenancy. The Tenant stated that she was never provided with a garage door opener.

The Landlord asked to call the agent for the Landlord who gave the garage door opener to the Tenant as a witness. The agent was contacted by telephone but the call was redirected to voice mail.

The Landlord has applied to retain \$29.05 from the Tenant's security deposit in compensation for replacing a dining room light. The Agent for the Landlord, who is the Landlord's husband, stated that there was a dining room light in the rental unit at the start of the tenancy and that it was missing at the end of the tenancy. The Tenant stated that there was not a dining room light in the rental unit at the start of the tenancy.

The Witness for the Landlord stated that he could not recall if there was a dining room light in the rental unit at the start of the tenancy.

The Landlord has applied to retain \$67.19 from the Tenant's security deposit in compensation for replacing a kitchen light. The Agent for the Landlord stated that the light was painted black during the tenancy. The Tenant denied painting the light and she stated that it was in the same condition at the end of the tenancy as it was at the beginning of the tenancy.

The Witness for the Landlord stated that the kitchen light was painted black at the end of the tenancy, although he could not recall the condition of the light at the beginning of the tenancy. The Witness for the Landlord is a personal friend who was not in the rental unit at the beginning of the tenancy for the purpose of recording the condition of the rental unit.

The Landlord has applied to retain \$16.98 from the Tenant's security deposit in compensation for replacing a broken dimmer switch. The Agent for the Landlord stated that the dimmer switch was broken during the tenancy. The Tenant denied breaking the switch and she does not even recall a dimmer switch in the dining room, given that there was no dining room light.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid a security deposit of \$650.00 on November 02, 2008, that the tenancy ended on November 02, 2010, that the Tenant provided the Landlord with a forwarding address, in writing, on October 31, 2010, that the Tenant returned \$456.00 of the security deposit sometime after November 17, 2010, that the Tenant did not authorize the Landlord to retain \$194.00 of her security deposit, that the Landlord did not file an Application for Dispute Resolution claiming against the deposit until sometime in March of 2011, and

that the Landlord did not have authorization to retain \$194.00.

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 full security deposit and she did not file an Application for Dispute Resolution within fifteen days of the tenancy ending, even though she was given a forwarding address, in writing, prior to the tenancy ending.

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 any interest due on the original amount.

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. 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. In these circumstances the Landlord has the burden of proving that the Tenant damaged the rental unit. When a tenant denies damaging a rental unit the landlord is generally required to provide some sort of evidence to corroborate the landlord's testimony regarding the damage.

I find that the Landlord has submitted insufficient evidence to show that the Tenant failed to return the garage door opener. In reaching this conclusion I was heavily influenced by the absence of evidence, such as testimony from an independent witness or a Condition Inspection Report, that corroborates that the Landlord's statement that the Tenant was given a garage door opener or that refutes the Tenant's statement that she was not given a garage door opener. As the Landlord has failed to establish that the Tenant was given a garage door opener, I find that the Landlord is not entitled to compensation for replacing the opener. On this basis, I dismiss the Landlord's claim for compensation replacing the garage door opener.

I find that the Landlord has submitted insufficient evidence to show that there was a dining room light in the rental unit at the start of this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that corroborates that the Agent for the Landlord's statement that there was a light in the dining room at the start of the tenancy or that refutes the Tenant's statement that there was no light. I found the testimony of the Witness for the Landlord in regard to this light to be of no value, as he did not recall if there was a light in the dining room at the beginning or the end of the tenancy. As the Landlord has failed to establish that there was a light in the dining room at the start of the tenancy, I find that the Landlord is not entitled to compensation for replacing the

light. On this basis, I dismiss the Landlord's claim for compensation replacing a dining room light.

I find that the Landlord has submitted insufficient evidence to show that the Tenant painted the kitchen light. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that corroborates that the Agent for the Landlord's statement that the light was painted during this tenancy or that refutes the Tenant's statement that the light had been painted prior to the start of the tenancy. I found the testimony of the Witness for the Landlord in regard to this light to be of limited value, as he could not recall the condition of the light at the beginning of the tenancy. As the Landlord has failed to establish that the Tenant painted the light, I find that the Landlord is not entitled to compensation for replacing the light. On this basis, I dismiss the Landlord's claim for compensation replacing a kitchen light.

I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged a dimmer switch. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a Condition Inspection Report, that corroborates that the Agent for the Landlord's statement that the switch was in good condition at the start of the tenancy or that refutes the Tenant's statement that she did not damage the dimmer switch. I found the testimony of the Witness for the Landlord in regard to this light to be of limited value, as he could not recall the condition of the light at the beginning of the tenancy. As the Landlord has failed to establish that the Tenant damaged the switch, I find that the Landlord is not entitled to compensation for replacing the switch. On this basis, I dismiss the Landlord's claim for replacing a dimmer switch.

Conclusion

I find that the Tenant has established a monetary claim of \$895.60, which is comprised of double the security deposit, plus \$1.60 in interest on the original amount of the security deposit, plus \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, less the \$456.00 that has already been returned to the Tenant. On this basis, I grant the Tenant a monetary Order for \$895.60. 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.

I find that the Landlord's Application for Dispute Resolution is without merit and I dismiss the Landlord's application to recover the fee for filing the Landlord's claims.

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 22, 2011.

Residential Tenancy Branch