



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

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 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 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 address noted on the Application, on November 22, 2010. The Landlord cited a Canada Post tracking number that corroborates this statement. The Landlord stated that this address was provided to him as a forwarding address on November 04, 2010. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the female Tenant did not appear at the hearing.

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 address noted on the Application, on November 22, 2010. The Landlord cited a Canada Post tracking number that corroborates this statement. The Landlord stated that this address was provided to him as a forwarding address on November 04, 2010. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however the male Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damages to the rental unit, to retain all or part of the security deposit paid by the Tenant, and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord stated that he believes this tenancy began on November 01, 2009 and the Tenants vacated the rental unit on November 03, 2010. He stated that the Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$200.00. He stated that he

returned \$185.76 of the deposits on November 04, 2011 and that he filed an Application for Dispute Resolution seeking to retain the remaining \$614.24.

The Landlord stated that a condition inspection report was completed at the beginning and the end of this tenancy, in the presence of the male Tenant. The reports were not submitted as evidence.

The Landlord is seeking compensation, in the amount of \$274.39, for cleaning the carpets, which the Landlord contends were dirty at the end of the tenancy. The Landlord submitted photographs that show the carpet required cleaning. He stated that he paid \$274.39 to clean the carpets but he did not submit a copy of that receipt.

The Landlord is seeking compensation, in the amount of \$60.00, for cleaning the rental unit, which the Landlord contends was not properly cleaned at the end of the tenancy. The Landlord submitted photographs that show the rental unit required cleaning. He stated that he paid \$60.00 to have the unit cleaned but he did not submit a copy of that receipt.

The Landlord is seeking compensation, in the amount of \$43.61, for repairing a window screen, which the Landlord contends was damaged during the tenancy. The Landlord submitted a photograph of a damaged screen. He stated that he paid \$43.61 to replace the screen but he did not submit a copy of that receipt.

The Landlord is seeking compensation, in the amount of \$150.00, for removing scrap wood allegedly left behind at the end of the tenancy. The Landlord submitted a photograph that shows scrap wood was left outside the rental unit. He stated that he paid \$150.00 to have the wood removed but he did not submit a copy of that receipt.

The Landlord is seeking compensation, in the amount of \$86.24, for pressure washing the carpet to remove oil stains and children's drawings from the carport/driveway. The Landlord submitted photographs that show the area required cleaning. He stated that he paid \$86.24 to rent a power washer and that he spent approximately six hours of his time cleaning the area. He did not submit a copy of this receipt.

Analysis

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 these circumstances, the landlord bears the burden of proving he is entitled to compensation.

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.

On the basis of the testimony of the Landlord and the photographs that corroborate that testimony, I find that the Tenants failed to comply with section 37(2) of the Act when they failed to leave the rental unit, the carpet, and the residential property in reasonably clean condition at the end of the tenancy; and when they failed to repair the damaged screen at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for losses incurred as a result of the Tenant's failure to comply with the Act.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlord failed to establish the true cost of cleaning the carpet, cleaning the rental unit, removing wood from the property, and replacing a broken screen. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as a receipt, that corroborates the Landlord's testimony that he incurred these costs. On this basis, I award nominal damages in the amount of \$1.00. This award is simply to acknowledge that the Tenant's failed to comply with their legal obligation and is not representative of the Landlord's actual losses.

On the basis of the testimony provided by the Landlord and in the absence of evidence to the contrary, I accept that he spent six hours of his time cleaning the carport and driveway with a power washer. While I am unable to award compensation for the cost of renting a power washer, I am able to compensate him for the amount of the claim, which is \$86.24, as compensation for the time he spent cleaning the carport/driveway.

I find that the Landlord's application has some 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 \$137.24, which is comprised of \$86.24 for cleaning the carport/driveway, \$1.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the security deposit paid by the Tenants, in full satisfaction of the monetary claim.

As the Landlord has not established that he is entitled to retain more than \$137.24, I find that he must return the remaining unreturned portion of the security deposit, which is \$477.00. Based on these determinations I grant the Tenants a monetary Order for the amount \$477.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, 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: March 25, 2011.

Residential Tenancy Branch