



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNR, 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, for a monetary Order for unpaid rent; 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 Tenant via registered mail at the address noted on the Application, on December 06, 2010. The Landlord submitted Canada Post Documentation that corroborates this statement. The Landlord stated that the service address used was the forwarding address provided to her when the Condition Inspection Report was completed at the end of the tenancy. 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 Tenant did not appear at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. She stated that she served a copy of these documents to the Tenant when she served the Application for Dispute Resolution. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act*, and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit, compensation for unpaid rent, and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord stated that this tenancy began on March 04, 2010 and that it ended on August 23, 2010. She stated that they had a tenancy agreement that required the Tenant to pay monthly rent of \$700.00 on the first day of each month.

The Landlord stated that a condition inspection report was completed at the beginning of this tenancy and at the end of this tenancy, a copy of which was submitted in evidence. It appears to have been signed by the Tenant on both occasions. When the report was completed at the end of the tenancy the Tenant provided the Landlord with written permission to retain her security deposit of \$350.00 for part of the rent that had not been paid for August of 2010.

The Landlord stated that the Tenant did not pay rent that was due on August 01, 2010. The Landlord is seeking compensation, in the amount of \$350.00, which represents the amount of rent that is still due after the Tenant's security deposit was applied to the rent.

The Landlord is seeking compensation, in the amount of \$69.32, to repair a wall that was damaged in the master bedroom. The Condition Inspection Report that was completed at the beginning of the tenancy indicates that the wall was in good condition. The Condition Inspection Report that was completed at the end of the tenancy indicates that the wall was damaged. The Landlord stated that she submitted a receipt for the repairs that were done to the wall, however I did not have that receipt in front of me at the time of the hearing and I could not find it in the Residential Tenancy Branch electronic records management system.

The Landlord is seeking compensation, in the amount of \$66.08, to change the lock in the rental unit. She stated that not all of the keys to the rental unit were returned at the end of the tenancy. This statement is corroborated by the Condition Inspection Report that was completed at the end of the tenancy. The Landlord stated that she submitted a receipt for the cost of changing the lock, however I did not have that receipt in front of me at the time of the hearing and I could not find it in the Residential Tenancy Branch electronic records management system.

The Landlord is seeking compensation, in the amount of \$123.20, to clean the carpet in the rental unit. She stated that the carpet were more stained at the end of the tenancy than it was at the start of the tenancy, and that she did not notice the new stain when the Condition Inspection Report was completed at the end of the tenancy, as the inspection was done after dark and the room has no permanently affixed lighting fixtures. The Landlord submitted a photograph of the carpet, which shows the carpet requires cleaning. The Condition Inspection Report that was completed at the beginning of the tenancy indicates that the carpets had some marks on them at the start of the tenancy. The Landlord stated that she submitted a receipt for the cost of cleaning the carpets, however I did not have that receipt in front of me at the time of the hearing and I could not find it in the Residential Tenancy Branch electronic records management system.

Analysis

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that this tenancy ended on August 23, 2010 and that the Tenant was required to pay monthly rent of \$700.00 on the first day of each month.

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not pay rent of \$700.00 that was due on August 01, 2010, although she gave the Landlord written permission to retain the security deposit of \$350.00 as partial payment for her rent. As the Tenant was required to pay rent of \$700.00 on August 01, 2010 and she has given the Landlord permission to keep her security deposit in partial payment of that debt, I find that she still owes the Landlord \$350.00 in rent for August.

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.

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the wall in the master bedroom was damaged. I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when she failed to repair the wall 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*.

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not return all of the keys to the rental unit. I find that the Tenant failed to comply with section 37(2)(b) of the *Act* when she failed to return all of the keys. 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 evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant did not clean the carpet at the end of the tenancy. I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when she failed to clean the carpet 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*.

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 repairing the damage to the wall, changing the lock, and cleaning the carpet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence, such as receipts, that corroborate the Landlord's statements regarding the costs of remedying these breaches. Although the Landlord believes that she submitted the receipts to the Residential Tenancy Branch and that she served them on the Tenant, I cannot, with any reasonable degree of certainty, conclude that they were submitted to the Residential Tenancy Branch or that

they were served to the Tenant. As they were not available to me when making a determination in this matter, I am unable to consider the receipts.

On this basis, I award nominal damages in the amount of \$1.00. This award is not meant to reflect the costs of repairing the damage to the rental unit. Rather, it is meant to acknowledge that the Landlord has suffered a loss that resulted from the Tenant's failure to comply with the *Act*.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$401.00, which is comprised of \$350.00 in unpaid rent, \$1.00 in nominal damages, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$401.00. 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: April 06, 2011.

Residential Tenancy Branch