



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MND, 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; for a monetary Order for unpaid rent; and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent, in separate packages, to each Tenant, via a well known courier company, on June 15, 2011. The male Landlord cited a tracking number for each package. He stated that the packages were sent to the service address on the Application for Dispute Resolution, which was provided to the Landlord by the Tenants' current landlord. The Landlord contacted the courier company during the hearing and determined that the packages were delivered to the unit on June 16, 2011.

As there was a postal disruption during this period, I accept that these documents were sufficiently served to the Tenants by courier, pursuant to section 71(2)(c), however the Tenants did not attend at the hearing. The hearing was conducted in the absence of the Tenants.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent and/or damage to the rental unit, and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to sections 67 and 72(1) of the *Residential Tenancy Act (Act)*.

Background and Evidence

The male Landlord stated that this tenancy began as a month to month tenancy on November 01, 2009, after the end of a fixed term tenancy, and that it ended on May 31, 2011. The male Landlord stated that the Tenants were originally required to pay monthly rent of \$1,700.00 but that the rent was reduced to \$1,550.00 in March of 2010.

The Landlord stated that rent was not paid for May and that the Tenant had outstanding rent of \$250.00 from the previous month.

The Landlord is seeking compensation, in the amount of \$750.00 to replace cedar trees in the rear yard. The Landlord submitted a photograph of the rental unit immediately prior to the start of the fixed term tenancy, which shows the trees in reasonably healthy condition, albeit some appear to have already died in this photograph. The male Landlord stated that the trees in the photograph died because the neighbour cut off the water supply to those particular trees. He stated that the Tenants were informed that they were required to water the lawn and plants during their tenancy.

The male Landlord stated that he does not believe the Tenants sufficiently watered the trees during this tenancy, which resulted in the death of the trees. The Landlord submitted photographs of the trees, which were taken shortly after the end of the tenancy, which clearly show the trees have died. The Landlord submitted an estimate from a landscaping company, which indicates it will cost \$750.00 to replace the cedars.

The Landlord is seeking compensation, in the amount of \$100.00, to repair a worn spot in laminate flooring. The Landlord submitted photographs of the flooring prior to the start of the fixed term tenancy, which shows the floor was in good condition. The Landlord submitted a photograph of the flooring which was taken shortly after the end of the tenancy, which shows the floor was damaged in one spot. The male Landlord stated that the floor was not damaged at the start of the tenancy and that a flooring professional estimated that it will cost \$100.00 to repair the damage. The Landlord submitted no documentary evidence to corroborate his statement that it will cost \$100.00 to repair the damage.

The Landlord is seeking compensation, in the amount of \$129.99, to replace a missing microwave. The male Landlord stated that there was a microwave in the rental unit at the start of the tenancy and that the microwave was missing at the end of the tenancy. The male Landlord stated that he can purchase a microwave for \$129.99. The Landlord submitted no documentary evidence to corroborate his statement that it will cost \$1129.99 to replace the microwave.

The Landlord is seeking compensation, in the amount of \$120.00, for cleaning the rental unit. The male Landlord stated that the Landlords spent at least twelve hours cleaning the rental unit. The Landlord submitted photographs that show some cleaning was required at the end of the tenancy.

Analysis

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were required to pay monthly rent of \$1,550.00 during the latter portion of this tenancy and that the Tenants failed to pay rent of \$1,800.00 from the months of April and May of 2011. I therefore find that the Tenants owe the Landlord \$1,800.00 in unpaid rent.

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.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenants were required to water the cedar trees on the residential property; that the Tenants did not adequately water the cedar trees; and that the trees died due to insufficient watering. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to replace the dead cedar trees. 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*, which in these circumstances is \$750.00.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenants damaged the laminate flooring during this tenancy. 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 floor. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$100.00 to repair the floor. On this basis, I award nominal damages in the amount of \$1.00. This award is simply intended to acknowledge that the Tenant breached the *Act* and is not intended to represent the cost of repairing the floor.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the rental unit was equipped with a microwave at the start of the tenancy and that it was missing at the end of the tenancy. In addition to establishing that a microwave was missing, a landlord must also accurately establish the cost of replacing that item. In these circumstances, I find that the Landlord failed to establish the true cost of replacing the microwave. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$129.99 to replace the microwave. On this basis, I award nominal damages in the amount of \$1.00. This award is simply intended to acknowledge that the Tenant breached the *Act* and is not intended to represent the cost of replacing the microwave.

On the basis of the evidence presented by the Landlord and in the absence of evidence to the contrary, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. 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*, which in these circumstances is \$120.00 in compensation for the time they spent cleaning the unit.

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 \$2,722.00, which is comprised on \$1,800.00 in unpaid rent, \$870.00 in damages, \$2.00 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 \$2,722.00. 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: September 13, 2011.

Residential Tenancy Branch