



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed for damage to the rental unit; to keep all or part of the security deposit/pet damage deposit; and to recover the fee for filing the Landlord's Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit/pet damage deposit and to recover the fee for filing the Tenant'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 oral evidence, to ask questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant with the Application for Dispute Resolution. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings. Several receipts were included with these documents.

The Landlord submitted additional documents to the Residential Tenancy Branch, which included two photographs. The Agent for the Landlord is not certain whether those documents were served to the Tenant. The Tenant stated that she did not receive any evidence other than the documents received with the Application for Dispute Resolution. As it has not been established that the additional documents were served to the Tenant they were not 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; whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether either party is entitled to recover the filing fee for the cost of their Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2010; that the Tenant paid a security deposit/pet damage deposit totalling \$1,000.00; that a condition inspection report was not completed at the beginning or the end of this tenancy; that this tenancy ended on June 20, 2011; and that the Tenant provided the Landlord with her forwarding address, in writing, on June 27, 2011.

The Landlord is seeking compensation, in the amount of \$251.97 for replacing weather stripping and 3 sets of blinds, which the Landlord contends was damaged during the tenancy. The Landlord submitted a receipt to show that it purchased four sets of blinds for \$84.05. The Agent for the Landlord stated that he spent 1.5 hours replacing each set of blinds, for which the Landlord is claiming compensation at a rate of \$20.00 per hour. The Landlord submitted no evidence to corroborate the Agent for the Landlord's testimony that 3 sets of blinds were damaged at the end of the tenancy or that the weather stripping was in good condition at the start of the tenancy.

The Tenant agreed that her daughter damaged one set of blinds but she stated that none of the other blinds in the unit needed to be replaced. She stated that the weather stripping was damaged prior to the start of the tenancy and was not further damaged during the tenancy.

The Landlord is seeking compensation, in the amount of \$100.00 for painting in the rental unit. The Agent for the Landlord stated that the walls were dirty and marked in several areas and this claim relates to time spent touching up the walls. The Landlord submitted no evidence to corroborate the Agent for the Landlord's testimony that the walls were damaged during the tenancy.

The Tenant stated that the walls were in the same, or similar, condition at the start and the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit, which the Landlord contends was needed at the end of the tenancy. The Landlord submitted no evidence to corroborate this particular claim. The Tenant stated that the rental unit did not require cleaning at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$75.00, for cleaning/repairing the yard of the rental unit, which the Landlord contends was damaged by the Tenant's dog digging in the yard. The Landlord submitted no evidence to corroborate this particular claim.

The Tenant stated that her dog did not dig holes in the yard and that no significant repairs were required. She stated that she intended to mow the lawn before the end date of the tenancy but the Landlord had mowed the lawn prior to the end of the tenancy, so she did not need to mow the lawn.

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. 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 establish that the Tenant damaged weather stripping in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the weather stripping was in good condition at the start of the tenancy or that refutes the Tenant's testimony that it was damaged prior to the start of the tenancy. As the Landlord has failed to establish that the weather stripping was damaged during this tenancy, I dismiss the Landlord's claim for compensation for replacing the weather stripping.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair one set of blinds that she acknowledged were damaged during the tenancy. As tenants are required to repair damage to a rental unit, I find that the Tenant must compensate the Landlord for the cost of replacing this one set of blinds. I therefore award the Landlord compensation for the 1.5 hours it took to replace the blinds, at an hourly rate of \$20.00, plus \$21.01, which is 25% of the cost of purchasing the four blinds.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant damaged the other blinds in the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the other blinds were damaged at the end of the tenancy or that refutes the Tenant's testimony that they were not damaged. As the Landlord has failed to establish that the other blinds were damaged during this tenancy, I dismiss the Landlord's claim for compensation for replacing the remaining blinds.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant damaged the walls in the rental unit, beyond what is considered normal wear and tear. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the walls were damaged during the tenancy or that refutes the Tenant's testimony that they were not damaged. As the Landlord has failed to establish that the walls were damaged during this tenancy, I dismiss the Landlord's claim for compensation for repainting the walls.

I find that the Landlord has submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition. In reaching this conclusion I was heavily

influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the unit required cleaning or that refutes the Tenant's testimony that the rental unit did not require cleaning. As the Landlord has failed to establish that the unit required cleaning, I dismiss the Landlord's claim for compensation for cleaning.

I find that the Landlord has submitted insufficient evidence to establish that the yard required repairs at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the yard required repairs or that refutes the Tenant's testimony that the rental unit did not require repairs. As the Landlord has failed to establish that the yard required repairs, I dismiss the Landlord's claim for compensation for yard work.

I find that the each Application for Dispute Resolution has some merit and that the parties are therefore obligated to pay their own filing costs.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$51.01, in compensation for replacing one set of blinds.

I find that the Tenant has established a monetary claim of \$1,000.00, which represents the return of her security deposit.

After offsetting the two monetary claims, I find that the Landlord must pay \$948.99 to the Tenant. As the Landlord has already returned \$363.03, I find that the Landlord still owes the Tenant \$585.96.

Based on these determinations I grant the Tenant a monetary Order for the amount \$585.96. 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: September 21, 2011.

Residential Tenancy Branch