



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On July 19, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution.

On October 03, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent or utilities; 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.

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 submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted one document to the Residential Tenancy Branch, copies of which were allegedly served to the Landlord at the same time the Landlord was served with the Tenant's Application for Dispute Resolution. The Landlord acknowledged receipt of the Application for Dispute Resolution but not the single document that was allegedly served at the same time. The single document was not considered as evidence for these proceedings, as the Landlord did not acknowledge receipt of the document. In excluding this document as evidence I note that it was not relevant to the matters in dispute and there is therefore no need to consider an adjournment for the purposes of re-serving this evidence.

Preliminary Matter

At the hearing the Landlord stated that they amended the amount of their Application for Dispute Resolution to include a claim for compensation for loss of revenue. The Landlord acknowledged that it did not clearly advise the Tenant of why the claim for compensation was increased to \$2,056.24 from \$856.24. The Landlord was advised that the application for compensation for unpaid rent/loss of revenue was being refused, pursuant to section 59(5) (a) of the *Residential Tenancy Act (Act)*, because the Application for Dispute Resolution did not provide sufficient particulars of the claim for loss of revenue/unpaid rent, as is required by section 59(2)(b) of the *Act*.

In making this determination, I was strongly influenced by the fact that the Landlord did not clearly specify whether they were claiming compensation for unpaid rent or loss of revenue. Although the Landlord mentions in the Application for Dispute Resolution that insufficient notice to end the tenancy was given by the Tenant, the Landlord does not specify what compensation is being sought as a result of that notice. I specifically note that the claim for loss of revenue was not included in the detailed calculation of claim that was submitted by the Landlord.

I find that proceeding with the Landlord's claim for loss of revenue at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claim. The Landlord retains the right to file another Application for Dispute Resolution in which the Landlord claims compensation for loss of revenue.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid utilities and damage to the rental unit; whether the security deposit should be retained by the Landlord or returned to the Tenant; whether any penalties are due in relation to the return of the security deposit; and whether either party is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 15, 2010; that on, or about, May 08, 2011 the Tenant provided written notice to end the tenancy on June 15, 2011; that the Tenant vacated the rental unit on June 15, 2011; that the written tenancy agreement required the Tenant to pay monthly rent of \$1,250.00 on the first day of each month; that the written tenancy agreement specifies that water and garbage was not included in the rent; that an addendum to the tenancy agreement required the

Tenant to pay the metered utility statement; that the Tenant paid a security deposit of \$625.00; that a condition inspection report was not completed at the beginning or the end of this tenancy; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit until October 03, 2011.

The Tenant contends that a letter containing their forwarding address was placed in the mail slot of the rental unit on June 15, 2011 and that a copy of the letter was never served to the Landlord as evidence for these proceedings.

Both Landlords stated that they did not locate the letter that was allegedly placed in the mail slot of the rental unit. The female Landlord stated that they did not receive a service address for the Tenant until July of 2011 when they received the Tenant's Application for Dispute Resolution Hearing. The female Landlord stated that they did not file an Application for Dispute Resolution until October 03, 2011 because they hoped to resolve the matter with the Tenant and because they were gathering evidence to support their claim for compensation.

The Landlord is seeking compensation, in the amount of \$166.49, for unpaid utility charges incurred during the tenancy in the period January 01, 2011 to March 31, 2011. The female Tenant agreed that this amount was due to the Landlord.

The Landlord is seeking compensation, in the amount of \$129.83, for unpaid utility charges incurred in the period April 01, 2011 to June 30, 2011. The Tenant and the Landlord agreed that the Tenant is obligated to pay a pro-rated portion of this bill, as they did not reside in the rental unit for the entire billing period.

The Landlord is seeking compensation, in the amount of \$112.00, for cleaning the carpet. The Tenant agrees that the Landlord is entitled to compensation in this amount for cleaning the carpet.

The Landlord is seeking compensation, in the amount of \$70.55, for replacing the blinds. The Landlord contends that the blinds were bent at the end of the tenancy and that they were so dirty at the end of the tenancy that their attempts to clean them damaged them. The male Tenant stated that the blinds were clean and in good condition at the end of the tenancy. The Landlord submitted no evidence, such as photographs or a condition inspection report, to corroborate the testimony that the blinds were damaged.

The Landlord is seeking compensation, in the amount of \$10.04, for replacing an oven liner and four stove element protectors that were in the rental unit at the start of the tenancy. The Landlord contends that none of these items were in the rental unit at the end of the tenancy. The female Tenant stated that she did replace the stove element protectors and she does not recall whether there was an oven liner in place at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$51.42, for replacing the lint trap in the dryer. The female Landlord stated that the lint trap was in good condition at the start of the tenancy and that it was ripped at the end of the tenancy. The female Tenant stated that mesh of the lint trap was torn at the start of the tenancy and had been sewn together. She stated that she does not know if it was torn at the end of the tenancy but that if it was, it was because it was damaged prior to the start of the tenancy. The landlord submitted no evidence to corroborate the testimony that the lint trap was in good condition at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$155.81, for painting the walls in the rental unit. The Landlord submitted photographs of the walls in the rental unit which show several large holes in the wall. The female Tenant acknowledged that the photographs fairly represented the condition of the walls at the end of the tenancy. The male Landlord acknowledged that they mounted shelves and a television to the walls. The Landlord submitted receipt to show that they paid this amount for painting supplies.

The Landlord is seeking compensation, in the amount of \$160.00, for cleaning the rental unit. The Landlord stated that the bathroom and cupboards in the rental unit required cleaning at the end of the tenancy. The Landlord submitted photographs of the bathtub and bathtub surround at the end of the tenancy and after the areas had been cleaned. There was a clear difference in the cleanliness of the bathtub area in the before and after photographs. The Landlord submitted no photographs to show that any other areas in the rental unit required significant cleaning.

The female Tenant stated that the "before" photographs of the bathtub area was similar to the condition of the tub at the start and end of the tenancy. She stated that she attempted to clean this area many times and could never get rid of the black discoloration. She suspects that the bathtub has refinished and the tiling regROUTED in the "after" photographs. She stated that the rest of the rental unit was left in clean condition.

Analysis

I find that the Tenant provided insufficient evidence to show that they provided the Landlord with their forwarding address, in writing, on June 15, 2011. While I accept the Tenant's testimony that the forwarding address was placed through the slot of the rental unit on June 15, 2011, I also accept the Landlord's testimony that they did not locate the document that was placed in the mail slot of the rental unit.

I find that it is entirely possible that both parties are telling the truth in regards to the document that was placed in the mail slot. I find it entirely possible that the Tenant placed the document in the mail slot and that the Landlord either did not locate the document or did not recognize it as a document left for them. In reaching this determination I note that the Landlord does not live at the rental unit or conduct business at the rental unit and would not reasonably expect important documents to be

delivered to them at the rental unit. I specifically note that the *Act* does not specify that landlords can be served by sending a document to the rental unit.

On the basis of the undisputed evidence presented at the hearing, I find that sometime in July of 2011 the Landlord received the Tenant's forwarding address, in writing, when the Landlord was served with the Tenant's Application for Dispute Resolution. 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 security deposit and they did not file an Application for Dispute Resolution until October 03, 2011, which is clearly more than fifteen days after the later of the date the tenancy ended and the date the Landlord receives the Tenant's forwarding address in writing.

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.

As there is no dispute that the Tenant is responsible for paying the utility charges incurred in the period January 01, 2011 to March 31, 2011, I find that the Tenant owes the Landlord \$166.49 for unpaid utilities for charges incurred during this period.

As there is no dispute that the Tenant is responsible for paying the utility charges incurred in the period April 01, 2011 to June 15, 2011, which is a period of 76 days, I find that the Tenant is obligated to pay a 76/91 of the 91 day billing period of April 01, 2011 to June 30, 2011. I therefore find that the Tenant owes the Landlord \$108.42, which is 76/91 of the \$129.83 in utility charges that were incurred between April 01, 2011 to June 30, 2011.

As there is no dispute that the Landlord is entitled to compensation of \$112.00 for cleaning the carpet at the end of the tenancy, I find that the Tenant must pay this amount to the Landlord.

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 blinds were damaged during the tenancy. In reaching this conclusion I was heavily influenced

by the absence of evidence that corroborates the Landlord's claim that the blinds were damaged or that refutes the Tenant's claim that they were not dirty or damaged at the end of the tenancy. As the Landlord has not established that the blinds were damaged, I dismiss the Landlord's claim for compensation for the blinds.

Section 37(2) of the *Act* stipulates that a tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. I find that failing to replace oven liners or stove element protectors is not a breach of the *Act*. In reaching this conclusion, I find that using these products is a personal choice and a tenant is not obligated to use such products. Rather, they are simply obligated to ensure the stove and oven are left in reasonably clean condition. I therefore dismiss the Landlord's claim for compensation for the cost of replacing these items.

I find that the Landlord has submitted insufficient evidence to establish that the dryer lint trap was in good condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's claim that the lint trap was in good condition at the start of the tenancy or that refutes the Tenant's claim that it that the meshing had been sewn together prior to the start of the tenancy. As the Landlord has not established that the lint trap was not damaged prior to the start of the tenancy, I cannot conclude that the lint trap did not further deteriorate due to normal wear and tear. As tenants are not required to repair damage caused by reasonable wear and tear, I dismiss the Landlord's claim for compensation for the lint trap.

The Tenant acknowledged mounting shelves and a television on the wall. I find that these actions exceed what is considered normal wear and tear to walls and I therefore find that the Tenant was obligated to repair the resulting holes. In reaching this conclusion I was influenced by the photographs submitted in evidence which, in my view, demonstrate damage that exceeds normal wear and tear. I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to repair the holes in the wall and I find that they are obligated to compensate the Landlord for the cost of repainting the wall, which is \$155.81.

I find that the Landlord has submitted insufficient evidence to establish that the bathtub and bathtub surround were in clean condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's claim that the bathtub was in clean condition at the start of the tenancy or that refutes the Tenant's claim that the area was stained at the start of the tenancy. As the Landlord has not established that the area was not stained at the start of the tenancy, I cannot conclude that the Tenant was obligated to clean the black stains from the area at the end of the tenancy. I therefore dismiss the Landlord's claim for cleaning the bathtub area.

I find that the Landlord has submitted insufficient evidence to establish that the rest of 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 Landlord's

claim that the remainder of the rental unit required cleaning or that refutes the Tenant's claim that the rental unit was left in clean condition. As the Landlord has not established that the rental unit required cleaning, I dismiss the Landlord's claim for cleaning any portion of the unit.

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 Tenant for the cost of this Application for Dispute Resolution.

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

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,300.00, which is comprised of double the security deposit and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

I find that the Landlord has established a monetary claim, in the amount of \$592.72, which is comprised of \$274.91 in utilities, \$112.00 for cleaning the carpet, \$155.81 for painting, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two monetary claims, I find that the Landlord owes the Tenant \$707.28 and I grant the Tenant a monetary Order for that amount. 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: October 18, 2011.

Residential Tenancy Branch