



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On September 15, 2011 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On September 20, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*; for the return of her 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 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 documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was 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 damages to the rental unit; whether the security deposit should be returned to the Tenant or retained by the Landlord; and whether either party is entitled to recover the fee for filing an Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 07, 2011; that the Tenant paid a security deposit of \$800.00; that the Tenant paid a pet damage deposit of \$800.00; that this Tenant vacated the rental unit in May of 2011 but the

tenancy continued until August 31, 2011; that the Landlord did not return any portion of the security or pet damage deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, on August 31, 2011, although they do not agree on who actually wrote out the address.

The Landlord and the Tenant agree that they met at the rental unit on September 02, 2011. The Landlord stated that she had a condition inspection report partially completed and she intended to complete the report at that time, but the Tenant was not willing to complete the report during this viewing. The Tenant stated that she was not willing to complete the report on September 02, 2011 as the Landlord still had some personal property in the rental unit. The Landlord acknowledged that she did not provide the Tenant with written notice of another time to complete the condition inspection report.

The Landlord and the Tenant agree that they met at the rental unit on August 31, 2011, at which time the Landlord completed a condition inspection report, which was signed by the Tenant. Although the Tenant signed the report she did not indicate that she agreed that the report fairly represented the condition of the rental unit. At the hearing she stated that she does agree with some of the damages noted on the report.

The Landlord is seeking compensation, in the amount of \$110.00, for water damage caused to a cabinet drawer below the kitchen sink. The Tenant acknowledged that this drawer was damaged during the tenancy. The Landlord stated that the drawer was repaired on November 14, 2011. She submitted no documentary evidence, such as a receipt or an estimate, to show that it cost \$110.00 to repair the drawer.

The Landlord is seeking compensation, in the amount of \$491.22, for damage to walls and electrical fixtures. The Tenant acknowledged that some electrical fixtures/outlets were painted gold during the tenancy; that the walls were damaged in a variety of areas during the tenancy, partly as a result changing electrical switches; and that a closet in a bedroom that was painted blue was re-painted during the tenancy. The Landlord submitted an estimate from a professional paint company for these repairs, which indicates it would cost \$453.00 to repair these areas, plus the cost of the paint. The Landlord stated that she believes it will cost \$86.22 for paint although she submitted no documentary evidence to corroborate this statement.

The Landlord is seeking compensation, in the amount of \$157.50, for replacing a tap that was damaged during the tenancy. The Tenant acknowledged that a tap handle in a bathroom was damaged during the tenancy. The Landlord submitted an email from a plumbing company that indicates it will cost \$127.50 in labour to replace the faucet. The Landlord stated that she believes it will cost \$30.00 to purchase a replacement faucet although she submitted no documentary evidence to corroborate this statement.

The Landlord is seeking compensation, in the amount of \$545.00, for repairing the flooring. The Landlord stated that the rental unit has concrete flooring that has been

sealed, painted, and finished in a rustic manner. She stated that there were multiple small chips on the floor at the end of the tenancy, the most significant of which was in the living room. She speculated that the damage was caused by moving unprotected furniture over the floor. Photographs of the damaged areas were submitted in evidence. The Tenant stated that she is not aware of the damage to the floor as she either did not notice it or she moved out before the damage had occurred. She stated that this damage is normal wear and tear as there are several areas on the floor that sustained minor damage prior to the start of the tenancy.

The Landlord stated that paint was sprayed on the floor in a bedroom. The Tenant stated that this floor was not damaged while she was living in the rental unit but she believes her co-tenant damaged the floor while spray painting a dresser. A photograph of the painted area was submitted in evidence.

Analysis

On the basis of the undisputed evidence, I find that this tenancy began on September 07, 2011; that the Tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00; that the tenancy ended on August 31, 2011; that the Landlord did not return any portion of the security or pet damage deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Tenant provided the Landlord with a forwarding address, in writing, on August 31, 2011.

Section 23(1) of the *Act* stipulates that a landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. As the Tenant did not agree to inspect the rental unit on September 02, 2011 and she did not have possession of the rental unit until September 07, 2011, I find that the Tenant was not obligated to inspect the rental unit on September 02, 2011.

Section 23(3) of the *Act* stipulates that a landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. The *Residential Tenancy Regulation* stipulates that one of these opportunities must be given to the Tenant in writing. I find that the Landlord failed to comply with section 23(3) of the *Act*, as she never provided the Tenant with an opportunity, in writing, to inspect the rental on, or after, September 07, 2011.

Section 23(2)(a) of the *Act* stipulates that a landlord's right to claim against the security or pet damage deposit for damage to the rental unit is extinguished if the landlord fails to comply with section 23(3) of the *Act*. As the Landlord failed to comply with section 23(3) of the *Act*, I find that her right to claim against the deposit for damage to the rental unit has been extinguished.

On the basis of the undisputed evidence, I find that a condition inspection report was completed at the end of the tenancy, in the presence of the Tenant, at which time both parties signed the report.

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.

As the Tenant has acknowledged that a cupboard drawer was damaged by water during the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage. 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 cost of repairing the damaged drawer. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$110.00 to repair the drawer. On this basis, I hereby dismiss the Landlord's claim for compensation for repairing the drawer.

As the Tenant has acknowledged that the walls sustained some damage during the tenancy and that some electrical outlets and a closet were painted during the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage and to restore the rental unit to its original condition. I find that the Landlord is entitled to compensation for the cost of repairing the damages, in the amount of \$453.00, as this claim is supported by an estimate from a professional. I find that the Landlord failed to establish the cost of materials for these repairs. 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 \$86.22 for paint. On this basis, I dismiss the Landlord's claim for compensation for paint.

As the Tenant has acknowledged that a bathroom faucet handle was damaged during the tenancy, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage. I find that the Landlord is entitled to compensation for the cost of repairing the damages, in the amount of \$127.50, as this claim is supported by an email from a professional. I find that the Landlord failed to establish the cost of purchasing a new faucet. 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 \$30.00 for a new faucet. On this basis, I dismiss the Landlord's claim for compensation for the cost of the faucet.

I find that the damage to the floor, exclusive of the paint overspray, constitutes normal wear and tear. In reaching this conclusion I was heavily influenced by the photographs that were submitted in evidence. In my view the photographs demonstrate that the surface of the floor is uneven and could sustain minor damage, as depicted in the photographs, during normal daily living activities. As a tenant is not obligated to repair

damages arising from normal wear and tear, I dismiss the Landlord's claim for compensation for repairing this damage.

As the floor in one of the bedrooms was clearly damaged by paint and the Tenant believes her co-tenant had painted a dresser in that room, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damage. I find that the Landlord is entitled to compensation for the cost of repairing the damages.

The Landlord submitted an estimate, in the amount of \$610.00, for repairing all of the damage to the floor. As I concluded that the Landlord is only entitled to compensation for repairs caused by the paint, which I estimate represents 50% of the necessary repairs, I find that the Landlord is entitled to 50% of the cost of these repairs, which is \$305.00.

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.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution., the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I also decline to consider the Landlord's claims for travel cost associated to coordinating repairs, as the Tenant is not obligated to pay for costs associated to a Landlord's decision to conduct business from another community.

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 complied with section 38(1), as the Landlord filed an Application for Dispute Resolution within fifteen days of the date she received the Tenant's forwarding address and the date the tenancy ended.

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 complied with section 38(1) of the *Act*, I find that the Landlord is not obligated to pay double the deposits.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$935.50, which is comprised of \$885.50 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

As the Landlord's right to claim against the security deposit and pet damage deposit was extinguished by section 24(2) of the *Act*, I find that the Landlord must repay both deposits to the Tenant.

Section 72(2) of the *Act* authorizes me to deduct any amount I have ordered a tenant to pay to a landlord from any security deposit or pet damage deposit due to a tenant. I therefore authorize the Landlord to deduct the monetary claim of \$935.50, from the deposits she is obligated to return. Based on these determinations I grant the Tenant a monetary Order for the amount \$664.50.

I find that the Tenant's Application for Dispute Resolution was unnecessary, as the Landlord had already initiated a claim against the security deposit and pet damage deposit. My decision to return a portion of the deposits would have been the same even if the Tenant had not filed an Application for Dispute Resolution. I therefore dismiss the Tenant's claim to recover the fee for filing her Application for Dispute Resolution.

In the event that the Landlord does not comply with the monetary 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: December 05, 2011.

Residential Tenancy Branch