



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On October 13, 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 November 01, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of his security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord applied to amend the Tenant's name on the Landlord's Application for Dispute Resolution, so that it reflects the Tenant's name as it appears on the Tenant's Application for Dispute Resolution and as it was spelled by the Tenant at the outset of this hearing. The Tenant did not oppose the request and the Landlord's Application for Dispute Resolution was amended accordingly.

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 relevant 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, with the exception of one receipt for replacing mirrored doors.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2005 and that the tenancy ended on September 30, 2011.

The Agent for Landlord#1 stated that the Tenant paid a security deposit of \$422.50 on March 20, 2005. The Tenant is not certain of the amount paid or the date it was paid, although he agrees that the Agent for the Landlord's testimony is likely accurate.

The Landlord and the Tenant agree that the Tenant paid two deposits of \$75.00 for a remote control access fob; although neither of them can recall when those deposits were paid; that the fobs were returned to the Landlord; and that the deposits have not yet been returned to the Tenant.

The Landlord and the Tenant agree that the Tenant provided the Landlord with his forwarding address, in writing, on October 01, 2011.

The Agent for the Landlord#1 stated that a condition inspection report was completed on April 01, 2005, a copy of which was submitted in evidence. The Tenant stated that he cannot recall if he was present when this report was completed. I note that the Tenant did not sign the report to indicate he participated in the inspection at the start of the tenancy.

The Landlord and the Tenant agree that the rental unit was inspected on October 01, 2011. A copy of the inspection report that was completed on this date was submitted in evidence. The Tenant stated that he did not sign the report to indicate that he agreed with the contents of the report.

The Landlord is seeking \$516.24 for the cost of repairing two mirrored bedroom doors. The Tenant stated that the doors were installed after his tenancy began; that the doors were cracked during installation; that he reported the damage to an agent for the Landlord, who asked him to document the damage; that he provided the agent for the Landlord with a letter outlining the damage; that he was told the doors would be replaced but they never were; that the both doors were damaged in the bottom corner; and that over time the crack in the glass spread across the door.

The Agent for the Landlord #1 stated that they have nothing on file regarding the doors being cracked at the time of installation and that he believes the doors would have been repaired prior to the Landlord paying for the product if they had been damaged during installation.

The Agent for the Landlord #2 agreed that both doors are damaged in approximately the same location.

The Landlord is seeking \$75.00 for the cleaning the rental unit. The Agent for the Landlord #2 stated that he and another individual spent approximately 8 hours each cleaning the rental unit, as many areas in the unit required cleaning. The Landlord submitted no photographs of the rental unit. The condition inspection report completed at the end of the tenancy indicates cleaning was required.

The Tenant stated that he cleaned the rental unit very well and he does not believe additional cleaning was required. He stated that he refused to sign the condition inspection report at the end of the tenancy, in part, because he did not believe the rental unit required additional cleaning.

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 show that the doors were in good condition when they were installed in the rental unit. In reaching this conclusion, I was heavily influenced by the testimony of the Tenant, which was consistent and credible. I find it entirely possible that the doors were cracked during installation and that he reported the damage to the Landlord.

I find that Tenant's version of events is supported by the fact that the doors were damaged in approximately the same location. Had the doors been broken accidentally by the Tenant, I find it more likely that they would have been broken in different locations.

I find the Landlord's argument that the Landlord would have repaired the damage prior to paying for the installation if it had been reported to the Landlord, to be nothing more than mere speculation. While his speculation may be reasonable, I find it entirely possible that the matter was reported to an agent for the Landlord; that the person receiving the report simply forgot or neglected to take action; or that the person receiving the report viewed the damage and considered it minor, not knowing that the damage would spread.

I find that the Landlord has submitted insufficient evidence to show that the rental unit required cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of photographs or other documentary evidence that corroborates the Landlord's claim that the unit required cleaning or refutes the Tenant's claim that the unit did not require cleaning. I found the condition inspection report that was completed at the end of the tenancy to be of little value in determining this matter, as the Tenant did not agree that the report accurately reflects the condition of the unit. When parties cannot agree on the content of the inspection report when the report is being completed, the onus is the Landlord to prove the accuracy of the report when the Landlord is seeking compensation.

As the Landlord has failed to establish that the Tenant damaged doors in the rental unit or that additional cleaning was required, I dismiss the Landlord's claim for compensation.

Conclusion

As the Landlord has failed to establish a monetary claim, I find that the Landlord must return the Tenant's security deposit of \$422.50; the two \$75.00 fob deposits; and interest of \$14.96. The Tenant is not entitled to compensation pursuant to section 38(6) of the *Act*, as the Landlord complied with section 38(1) of the *Act*.

As the Landlord's claim has been without merit, I dismiss the Landlord's application to recover the filing fee.

As I would have ordered the Landlord to return the Tenant's security deposit even if the Tenant had not filed an Application for Dispute Resolution, I find that the Tenant did not need to file an Application for Dispute Resolution. I therefore dismiss the Tenant's application to recover the filing fee.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$587.46. 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: January 03, 2012.

Residential Tenancy Branch