



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNDS, FF

Introduction

This hearing was convened in response to cross applications.

On November 09, 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; 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. The Landlord reduced the amount of her financial claim from \$2,400.00 to \$1,454.77.

On November 24, 2011 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant's Application for Dispute Resolution was amended to reflect the correct spelling of the Landlord's name, as provided at the hearing.

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 stated that she served the Tenant with her Application for Dispute Resolution and some evidence, including photographs, by registered mail on November 09, 2011. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Landlord stated that she served the Tenant with a second package of evidence, via registered mail, on December 08, 2011, but the package was "refused" by the recipient. The Tenant acknowledged that she refused to accept a delivery of a package that was mailed to her by the Landlord because she did not know what the package contained. I find that the Tenant was properly served with this package of evidence and it was accepted as evidence for these proceedings. The Tenant cannot avoid service of documents for these proceedings by simply refusing to accept registered mail.

The Tenant stated that she served the Landlord with her Application for Dispute Resolution and some evidence, including photographs, by registered mail on November

28, 2011. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

At the conclusion of the hearing each party was given ample opportunity to provide additional evidence. Neither party asked to call a witness at this time, although the Landlord had indicated at the outset of the hearing that she intended to call a witness. The Landlord was not prompted to call the witness, although she was given several opportunities to introduce evidence at the conclusion of the hearing.

Issue(s) to be Decided

The issues to be decided in regards to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in regards to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to the return of her security deposit and 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 April 03, 2009; that the Tenant paid a security deposit of \$400.00; that the Tenant agreed to pay monthly rent of \$800.00 per month; that when this tenancy began the rent was due by the third day of each month; that after the tenancy began they mutually agreed that the rent would be due by the first day of the month; that on September 30, 2011 the Tenant gave the Landlord written notice of her intent to vacate on October 31, 2011; and that the Tenant vacated the rental unit on November 01, 2011.

The Landlord and the Tenant agree that a written condition inspection report was not completed at the beginning or the end of this tenancy. The parties agree that the Landlord made no attempts to schedule times and dates for the aforementioned reports.

The Tenant stated that she left a note in the rental unit on November 01, 2011, in which she provided the Landlord with a forwarding address. The Landlord stated that she located this document in the rental unit on November 02, 2011.

The Landlord and the Tenant agree that the Tenant did not give the Landlord written authorization to retain any portion of the security deposit and that none of the deposit has been returned to the Tenant.

The Landlord is seeking compensation, in the amount of \$55.00, for a portion of hydro costs incurred between September 07, 2011 and November 01, 2011. The Landlord and the Tenant agree that the Tenant was required to pay 50% of the electric bills. The

Landlord submitted a hydro bill for the period between September 07, 2011 and November 04, 2011, in the amount of \$110.08. The Tenant initially stated that she believed she paid this bill in October of 2011 but after being informed that the bill was not mailed until November 07, 2011 she acknowledged that she did not pay her portion of this bill.

The Landlord is seeking compensation, in the amount of \$224.00, to clean the rental unit. The Landlord submitted a copy of a receipt that shows she paid this amount to clean a variety of areas in the rental unit, including the bathroom; the kitchen cupboards; kitchen appliances; walls; floors; blinds; windows; and light switches.

The Landlord and the Tenant both submitted photographs of the rental unit, which they contend were taken at the end of the tenancy. The photographs submitted by the Tenant show areas of the rental unit were left in reasonably clean condition, which included the exterior of the fridge and stove.

The Landlord stated that the interior of the fridge and stove required cleaning and that the burner protectors on the stove required cleaning. The Landlord submitted photographs of these areas. The Tenant agreed that she did not clean these areas and she acknowledged that the photographs fairly represented the condition of the appliances.

The Landlord stated that the Tenant did not clean the filter above the stove, although she submitted no photographs to corroborate that claim. The Tenant agreed that she did clean the filter.

The Landlord stated that the Tenant did not clean the floor behind the fridge and stove, although she submitted no photographs of this area. The Tenant stated that she did clean that area and it was left in reasonably clean condition.

The Landlord stated that the Tenant did not clean the venetian blinds or the window sill in the kitchen, although she submitted no photographs of this area. The Tenant stated that she did clean the blinds and the window sill and they were left in reasonably clean condition.

The Landlord stated that the Tenant did not clean the living room floor, although she submitted no photographs to corroborate that claim. The Tenant stated that she did clean the living room floor and it was left in reasonably clean condition.

The Landlord stated that the Tenant did not clean the storage room in the rental unit. The Tenant stated that she did clean the storage area and that it was in essentially the same condition at the end of the tenancy as it was at the start of the tenancy. The Landlord submitted a photograph of this storage area, which is essentially an unfinished closet.

The Landlord is seeking compensation, in the amount of \$300.00, for painting the rental unit. The Landlord submitted photographs of damaged walls near two heating vents. The Landlord contends that the Tenant taped something over the vents because she smoked in the rental unit and that the walls were damaged when the covering was removed.

The Tenant stated that the walls were damaged prior to her moving into the rental unit and that the Landlord had told her they were damaged when the vents were professionally cleaned prior to her tenancy.

The Landlord is seeking compensation, in the amount of \$33.49, for replacing the locks in the rental unit. The Landlord and the Tenant agree that the Tenant did not return her copy of the key to the rental unit. The Landlord submitted a receipt to show that she incurred this expense.

The Landlord is seeking compensation, in the amount of \$800.00, for rent for November of 2011. The Landlord stated that she was seeking compensation for rent for this month because the Tenant did not vacate by October 31, 2011 and the unit was not left in reasonably clean condition at the end of the tenancy, which prevented her from renting the unit to a new tenant. The Landlord acknowledged that she did not have a new tenant for November 01, 2011, as she had not yet advertised the unit by that date.

The Landlord has claimed compensation for mailing costs and other costs associated to preparing for this dispute resolution proceeding. As these costs are not denominated, or named, by the *Act*, the Landlord was advised that I would not be considering her claim for compensation for these costs.

Analysis

On the basis of the undisputed evidence presented at this hearing, I find that the Tenant was obligated to pay 50% of the hydro bill during her tenancy. As the Tenant occupied the rental unit between September 07, 2011 and November 01, 2011, I find that she is obligated to pay her portion of the hydro bill for that period. The hydro bill in the amount of \$110.08 was for charges incurred between September 07, 2011 and November 04, 2011. As the Tenant only occupied the rental unit for 56 of this 59 day period, I find that she is only obligated to pay her portion of 56/59 of the bill. 56/59 of this bill is \$104.48. The Tenant is obligated to pay 50% of \$104.48, which is \$52.24.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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 submitted insufficient evidence to establish that the Tenant did not leave the area behind the fridge and stove; the kitchen blinds; the window sill in the kitchen; and the living room floor in reasonably clean condition. In reaching this conclusion, I was heavily influenced by the absence of evidence, such as photographs or a condition inspection report, that corroborates the Landlord's testimony that the areas required cleaning or that refutes the Tenant's testimony that the areas had been cleaned and were left in reasonably clean condition. As the Landlord has not established that these areas required cleaning, I find that she is not entitled to compensation for the costs of cleaning those areas.

I find that the Landlord submitted insufficient evidence to establish that the Tenant did not leave the storage area in reasonably clean condition. In reaching this conclusion, I was heavily influenced by the photograph of the area that was submitted in evidence by the Landlord. In my view this photograph shows that the storage area was left in reasonably clean condition for a storage area, albeit it was not left pristinely clean. As the *Act* only requires tenants to leave a rental unit in reasonably clean condition, I find that the Landlord is not entitled to compensation for cleaning the storage area.

On the basis of the undisputed testimony presented at the hearing and the photographs submitted by the Landlord, I find that the Tenant did not leave the interior of the fridge; the stove; and the filter above the stove in reasonably clean condition. As the Tenant did not leave these items in reasonably clean condition, as is required by section 37(2) of the *Act*, I find that the Landlord is entitled to compensation for cleaning these specific areas.

As the cleaning receipt, in the amount of \$224.00, included charges for cleaning a variety of areas in the rental unit, including the bathroom; the kitchen cupboards; walls; floors; blinds; windows; and light switches, I find that the Landlord is only entitled to a portion of this claim. While it is difficult to determine how much time the cleaner spent cleaning the kitchen appliances and how much time was spent cleaning the other areas in the house, I find it reasonable to conclude that 25% of the cleaners time was spent on the appliances. I therefore find that the Landlord is entitled to compensation in the amount of 25% of the cleaning bill, which is \$56.00.

I find that the Landlord submitted insufficient evidence to establish that the walls in the rental unit were in good condition at the start of the tenancy. In reaching this conclusion, I was heavily influenced by the absence of evidence, such as photographs or a condition inspection report, which corroborates the Landlord's testimony that the walls were undamaged at the start of the tenancy or that refutes the Tenant's testimony that the walls around the vents were damaged at the start of the tenancy. As the Landlord has not established the condition of the walls at the start of the tenancy, I find that the Landlord has not established that the Tenant damaged the walls during the tenancy. I therefore find that she is not entitled to compensation for the costs of repainting the walls.

On the basis of the undisputed testimony presented at the hearing, I find that the Tenant did not return all of the keys to the rental unit, as is required by section 37(2)(b) of the *Act*. I find that the Landlord is entitled to compensation for replacing the lock, in the amount of \$33.49.

As the Tenant did not vacate the rental unit on October 31, 2011 in accordance with her written notice to end the tenancy, I find that she is obligated to pay rent, on a per diem basis, for the one day she remained in possession of the rental unit. I find that the Tenant must compensate the Landlord for one day in November, at a daily rate of \$26.66.

I decline to award compensation for loss of revenue for the remainder of November, as the Landlord made no attempts to locate a new tenant for November 01, 2011. As the Tenant gave proper notice to end this tenancy on October 31, 2011 and the Landlord did not make reasonable attempts to rent the unit for November 01, 2011, I find that the Tenant cannot be held liable for any loss of revenue experienced by the Landlord during that month.

I find that the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution both have merit and I therefore find that neither party is obligated to reimburse the other party for the cost of filing an Application.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$168.39, which is comprised of rent of \$26.66; utilities of \$52.24; \$33.49 to change the lock; and cleaning costs of \$56.00.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security deposit in full satisfaction of this monetary claim.

Based on these determinations I grant the Tenant a monetary Order for the amount \$231.61, which represents the return of the remainder of her security deposit. 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: January 31, 2012.

Residential Tenancy Branch