



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MND, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent; damage to the rental unit, damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant acknowledged accepting two registered mail packages on April 23, 2012. One package included the notice of hearing, sent to the tenant on March 6, 2012. The tenant also received a 21 page evidence package that had been mailed by the landlord on April 16, 2012.

The tenant had been away and did not receive the mail until her return. The tenant initially requested an adjournment so she could obtain written statements from witnesses. She testified that she did have written statements and when told she could reads from the statements, she indicated that she would provide testimony and wished to proceed with the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent in the sum of \$445.39?

Is the landlord entitled to compensation for damage or loss in the sum of \$972.65?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenant took possession of the rental unit on January 28, 2012. She paid a \$550.00 deposit and \$1,100.00 for the first month's rent; the rent payment was returned to the tenant. No move-in condition in section report was completed, but a new kitchen had just been installed in the unit.

The tenant vacated the rental unit sometime between February 5 and 8, 2012; the date is in dispute.

The landlord has made the following claim:

Cabinet repair	896.00
Hydro and gas 12 days	56.62
Postage	20.03
	1418.04

A copy of the tenancy agreement was supplied as evidence; hydro and gas utility costs of 40% of the total bill, was to be paid by the tenant. The landlord resides in the upper unit of the home. Copies of the utility bills, pro-rated for 12 days of the tenancy, were supplied as evidence.

The landlord has claimed unpaid rent from January 28, 2012; the date the tenant took possession of the unit, to February 8, 2012, the date the tenant vacated the unit. The landlord has claimed gas and hydro costs based on bills submitted as evidence.

The parties agreed that on February 4, 2012, the tenant called the landlord to report a leak under the kitchen sink. The landlord went to the unit on Monday, February 6, 2012, and discovered several large quilts under the sink. The material was soaking wet and had caused serious damage to the brand new cabinet.

The landlord discovered that the hinge to the cabinet had also been broken and glued back to the cabinet door.

The landlord supplied an invoice for the cost of new cabinets installed on January 21, 2012, in the sum of \$3,360.00. An invoice was issued on March 10, 2012, in the sum of \$896.00, by the same individual, for replacement of the cabinet. The landlord stated the contractor was paid by cash.

The tenant stated that when she took possession of the unit she was told that the sink had a small leak. On February 4, 2012, the tenant called the landlord, who is a licenced plumber, to report the leak under the sink. The landlord's written submission indicated that this call occurred on February 5, 2012, but during the hearing the landlord confirmed this call was made on February 4th.

Sometime around 10:30 a.m. on February 6, 2012, the landlord went downstairs to the unit, to investigate the reported leak. Both parties indicated that when the landlord discovered the water damage an altercation occurred that resulted in attendance by the police.

The tenant testified the landlord had asked her to place a pot under the leak; which she had done. The tenant had also temporarily turned off the water for the night, but had required use of water to clean baby bottles.

The tenant stated the hinge would not have been damaged if the landlord had come to the unit when she reported the leak; as a result of water the tenant had slipped on the floor, and when she fell she hit the cabinet door. The hinge broke off the door; which the tenant believes occurred as the result of the water damage to the door.

The landlord supplied photographs of the cabinet hinge and watermarks half way up one cabinet wall. The landlord stated they were forced to replace the whole cabinet box. The damaged area where the hinge had been installed showed broken particle board.

A move-out condition inspection report was completed on February 8, 2012. The landlord did not wish to have the tenant attend at the unit on her own, and had delayed the tenant's return to the unit so she could bring her mother with her to complete the move-out inspection.

The parties could not agree on the date the tenant vacated. The tenant stated she had removed her belongings by February 5, 2012; the landlord stated the tenancy did not end until February 8, 2012.

The tenant and landlord signed a document on February 8, 2012, in which the tenant acknowledged that the landlord was withholding the deposit as a result of water damage to the cabinet, pending a written estimate for repair. A copy of this document was supplied as evidence. The document indicated the landlord had been given a verbal estimate of \$500.00 for repair and that a site visit would confirm the estimate. The tenant agreed in writing that she would be responsible for any amount exceeding the damage deposit and she was also given the opportunity to obtain her own estimate from a professional cabinet maker.

The tenant confirmed she returned the keys on February 12, 2012 and that she had vacated the unit on February 8, 2012.

The landlord supplied photographs of the kitchen cabinets and broken hinge.

The landlord claimed postage costs.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 32(3) of the *Act* provides:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant

A dispute resolution officer may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

There is no doubt that the kitchen cabinets were new at the time the tenancy commenced. The tenant signed a document on February 8, 2012, allowing the landlord

to retain the deposit, agreeing that any amount not required to repair the cabinet would be returned to the tenant. The repair cost \$896.00, a sum that exceeded the value of the deposit by \$396.00.

The only time a tenant may sign agreeing to deductions from a deposit is at the end of a tenancy; this occurred. The tenant had been given the opportunity to obtain her own estimate for work, but could not afford to do so. Despite how the leak occurred, there was evidence before me that the tenant had signed a document agreeing to the damages, allowing the landlord to retain the deposit.

The Act also requires a party to mitigate any loss that they claim and in this case I find that the landlord did not take steps to mitigate their claim by immediately attending at the rental unit in the lower part of their home as soon as the report was made by the tenant. Testimony by the landlord indicated that the landlord waited from Saturday to Monday before checking the leak; by this time damage had occurred, which the tenant has confirmed in writing was at least, in part, her fault.

Therefore, I find that the landlord is entitled to retain the deposit in the sum of \$550.00, as payment for damage to the cabinet and hinge. The balance of the claim is dismissed as the landlord failed to mitigate their claim by taking immediate action on February 4, 2012, the day the tenant reported the leak.

In relation to the claim for unpaid rent, I find that the landlord is entitled to compensation for rent in the sum of \$36.16 per day from January 28, 2012, to February 8, 2012, the date the condition inspection report was completed and the date I find that the tenancy ended. Therefore, the landlord is entitled to compensation in the sum of \$433.92; the balance claimed is dismissed.

Based on the utility bills submitted as evidence, the tenancy agreement term requiring payment of 40% of these costs, I find that the landlord is entitled to compensation as claimed.

Postage costs in preparation for a hearing are not contemplated by the Act and are dismissed.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
12 days rent	445.39	433.92
Hydro and gas 12 days	56.62	56.62
Postage	20.03	0
	1418.04	1,040.54

As the landlord's application has merit I find that the landlord is entitled to the filing fee cost in the sum of \$50.00.

The landlord will retain the deposit in partial satisfaction of the claim.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$1,090.00 which is comprised of damages and damage or loss and the \$50.00 filing fee.

The landlord will be retaining the tenant's security deposit in the amount of \$550.00 in satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance in the sum of \$540.54. 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

The balance of the claim is dismissed.

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: May 02, 2012.

Residential Tenancy Branch