



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, FF

Introduction

This hearing was convened in response to the Landlord's 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 damage; and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wished to reply upon as evidence at the hearing were sent to each Tenant, via registered mail, at the service address noted on the Application, on May 01, 2012. The Landlord submitted Canada Post Documentation that corroborates that mail was sent to each Tenant on May 01, 2012. The male Landlord stated that the service address noted on the Application was provided by the Tenants during their previous dispute resolution hearing, which was held on April 24, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*, however neither Tenant appeared at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for damage to the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The male Landlord stated that this tenancy began on January 01, 2012 and that it ended on April 17, 2012.

The Landlord is seeking compensation, in the amount of \$164.64, for cleaning the carpet in the rental unit. The Landlord submitted photographs of the carpet, which clearly shows cleaning was required. The Landlord submitted an estimate to show that it will cost \$164.64 for cleaning the carpet. The male Landlord stated that a third party was hired to clean the carpet, to repair and paint the walls, and to repair other minor damage in the rental unit. He stated that the third party charged \$1,327.00 for all of the

repairs, although he did not break down the costs for the individual repairs/cleaning. A copy of the receipt from the third party was not submitted in evidence.

The Landlord is seeking compensation, in the amount of \$340.43, for cleaning the rental unit. The Landlord submitted photographs of the rental unit, which clearly show cleaning was required. The Landlord submitted an estimate to show that it will cost \$340.43 for cleaning the unit. The male Landlord stated that they spent approximately 14 hours cleaning the unit, which included washing the walls due that were stained as a result of smoking in the unit.

The Landlord is seeking compensation, in the amount of \$448.00, for removing personal items and garbage that was left in the rental unit at the end of the tenancy. The male Landlord stated that the items have not yet been removed so they do not know the true cost of removing the items/garbage. The Landlord submitted photographs of the rental unit, which clearly show items/garbage was left behind. The Landlord submitted an email from a third party who estimates it will cost \$400.00 to remove the items. The male Landlord stated that the third party based this estimate on photographs supplied to him by the Landlord.

The Landlord is seeking compensation, in the amount of \$1,064.00, for painting the rental unit, which was newly painted the day before this tenancy began. The Landlord submitted photographs of the rental unit, which show the walls are damaged in several places. Both Tenants stated that the walls were stained with nicotine. The photographs corroborate this testimony, although the photographs are not of particularly good quality. The Landlord submitted an estimate to show that it will cost \$1,064.00 to paint the unit. The male Landlord stated that a third party was hired to clean the carpet, to repair and paint the walls, and to repair other minor damage in the rental unit. He stated that the third party charged \$1,327.00 for all of the repairs, although he did not break down the costs for the individual repairs/cleaning. A copy of the receipt from the third party was not submitted in evidence.

The Landlord is seeking compensation, in the amount of \$189.10, for the cost of renting an ozone generator to neutralize the smell of cigarette smoke in the rental unit. The male Landlord stated that the Tenant smoked inside the rental unit; that the Tenant was not permitted to smoke inside the rental unit; and that the unit continues to smell of smoke, even though it has been cleaned and painted. The male Landlord stated that they have not yet rented an ozone generator as they cannot afford it. The Landlord submitted an estimate to show that it will cost \$168.84 plus tax of \$20.26 to rent this equipment.

The Landlord is seeking compensation, in the amount of \$207.19, for the cost of re-keying two locks and replacing the door handle. The male Landlord stated that the Tenant inserted a screw into the key hole of door handle, which rendered the handle unusable. The Landlord submitted a photograph of the damage door handle. The male Landlord stated that the keys were not returned at the end of the tenancy. He stated that they replaced the damaged door handle and re-keyed the door handle and the

dead bolt so both items could be opened with a single key. The Landlord submitted an estimate to show that it will cost \$207.19 to re-key the locks and replace the door handle. The male Landlord stated that they paid less than this estimate, as they were able to remove the handle and deadbolt and bring it to the locksmith. He stated that he does not have the receipt with him, nor did he submit it in evidence, however he believes they paid \$40.00 to re-key the locks and \$35.00 to replace the handle.

The Landlord is seeking compensation, in the amount of \$39.20, for the cost of replacing a mirror that was removed from the rental unit at the end of the tenancy. The Landlord submitted photographs of the wall where the mirror had been previously affixed. The Landlord submitted no receipt or estimate to corroborate this claim.

The Landlord was advised that the claim for ink cartridges used to prepare for these proceedings was not being considered, as I do not have authority to award costs relating to participating in these proceedings, with the exception of costs for filing an Application for Dispute Resolution.

The male Landlord withdrew the application for the filing fee related to a previous dispute resolution proceeding.

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.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to leave the carpet in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Although the Landlord has not submitted a receipt for the cost of cleaning the carpet, I find that the estimate that was submitted in evidence and the testimony that they paid a third party \$1,367.00 to complete a variety of repairs is sufficient to support the claim of \$164.64 for cleaning the carpet.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In these circumstances I find that the Landlord is entitled to compensation for the 14 hours they spent cleaning the rental unit, at an hourly rate of \$20.00 per hour, which I find to be reasonable compensation for labour of this nature.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to remove all of their personal belongings/garbage from the rental unit. 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 true cost of removing the personal items/garbage from the rental unit. In reaching this conclusion, I was strongly influenced by the fact that the email estimate was provided by a third party who has not personally viewed the items/garbage and that the estimate seems extremely high based on the quantity of items left in the unit. In my opinion these items could be loaded into a small truck and discarded in less than two hours, dependant on the location of the disposal site. Given the amount of work required, I find the estimate of \$400.00 to be unreasonable. On this basis, I hereby dismiss the Landlord's claim for compensation for disposing of property/garbage.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to eradicate the rental unit of the smell of smoke. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. In these circumstances I find that the Landlord is entitled to compensation for the cost of renting an ozone generator, which is \$189.10.

I also find that the Landlord is entitled to compensation for the cost of repainting the walls. Although the Landlord has not submitted a receipt for painting the unit, I find that the estimate that was submitted in evidence and the testimony that they paid a third party \$1,367.00 to complete a variety of repairs is sufficient to support the claim of \$1,064.00 for painting.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37 of the *Act* when they failed to repair a damaged door handle and failed to return keys to the rental unit. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Although the Landlord has not submitted a receipt for the cost of these repairs, I find that the estimate that was submitted in evidence and the testimony that they paid approximately \$75.00 is sufficient evidence to award compensation in the amount of \$75.00.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant removed a mirror from the rental unit. 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.

I find that the Landlord failed to establish the true cost of replacing the mirror. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Tenant's estimate that it will cost \$39.20 to replace the mirror. I therefore dismiss the Landlord's claim for compensation for replacing the mirror.

I find that the Landlord's application has 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.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,822.74, which is comprised of \$1,772.74 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount \$1,822.74. 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: June 21, 2012.

Residential Tenancy Branch