



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for 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's Application for Dispute Resolution was amended to reflect the correct spelling of the female Landlord's name.

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 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 relevant questions, and to make relevant submissions.

The Landlord submitted numerous documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the majority of the Landlord's evidence and it was accepted as evidence for these proceedings.

On July 10, 2012 the Landlord submitted an affidavit to the Residential Tenancy Branch. The Agent for the Landlord stated that this affidavit was mailed to the Tenant on July 10, 2012. The Tenant stated that she has not yet received this document. As the Tenant did not receive the affidavit prior to the hearing and it was not served in accordance with the timelines established by Residential Tenancy Branch Rules of Procedure, I decline to accept this affidavit as evidence.

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 unpaid rent/loss of revenue; whether the Tenant is entitled to a rent refund; whether the Landlord is entitled to compensation for damages; and whether either party is entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on May 01, 2010 and was to continue until April 24, 2012. The tenancy agreement specifies that the Tenant will move out of the rental unit or purchase the rental unit at the end of the fixed term of the tenancy.

The Agent for the Landlord stated that the Tenant was provided with the keys to the rental unit on May 01, 2010 and was permitted to occupy the property on that date, although they were not required to pay rent until July 01, 2010. The Tenant stated that the Tenant was provided with the keys to the rental unit in mid-June and they moved into the rental unit on July 01, 2010. The Tenant contends that the start date of the tenancy was written on the tenancy agreement to be May 01, 2010 for the purposes of assisting the Landlord in securing a mortgage, and was never intended to be the actual start date of the tenancy.

The Landlord and the Tenant agree that the Tenant did not purchase the property on April 24, 2012. The parties agree that they entered into a second fixed term agreement, which was submitted in evidence, that began on April 24, 2012 and was to continue until May 31, 2012. This tenancy agreement specifies that the Tenant will move out of the rental unit at the end of the fixed term of the tenancy. The Tenant contends that this tenancy agreement was signed "under duress". She stated that on March 06, 2012 the Landlord informed them that they did not wish to sell the property and they were advised they would have to move out of the rental unit on April 24, 2012 or sign a new agreement.

The Agent for the Landlord stated that both tenancy agreements require the Tenant to pay monthly rent of \$1,201.93; that this amount was included on both tenancy agreements prior to them being signed; and that the parties verbally agreed that the Tenant would only be required to pay \$1,100.00 per month in July, August, and September of 2010.

The Tenant stated that when they signed the first tenancy agreement the term regarding the amount of rent payable was incomplete; that the Landlord added the amount of rent payable to the agreement after the agreement was signed; and that the parties verbally agreed that the rent would be \$1,100.00 for the duration of the agreement. She stated that the rent of \$1,201.93 was noted on the second tenancy agreement when she signed it, although she reminded the Landlord that rent was only \$1,100.00. The Tenant introduced no evidence to corroborate this testimony.

The Tenant and the Landlord agree that the Tenant informed the Landlord they would be vacating the rental unit on June 15, 2012. The Tenant stated that they actually vacated the rental unit on June 10, 2012. The Agent for the Landlord stated that the rental unit was vacant when they went to the unit on June 16, 2012 and that the Landlord did not inspect the unit between June 10, 2012 and June 16, 2012.

The Tenant stated that they left some keys in the rental unit on June 10, 2012, although her daughter still has keys to the rental unit. The Agent for the Landlord stated that the Landlord located keys to the rental unit in the unit on June 16, 2012.

The Landlord and the Tenant agree that the Tenant only paid \$1,100.00 per month for the period between October 01, 2010 and May 31, 2012. The Landlord is seeking compensation for unpaid rent for these months, in the amount of \$101.93 per month. The Agent for the Landlord stated that the Landlord has not previously attempted to collect the unpaid rent as they expected they would recoup these losses when the Tenant purchased the property.

The Landlord is also seeking $\frac{1}{2}$ of one month's rent as the Tenant remained in possession of the rental unit for a portion of June of 2012. The Tenant agrees that the Landlord is entitled to $\frac{1}{2}$ month's rent for June.

The Landlord and the Tenant agree that the Tenant provided the Landlord with two money orders, in the total amount of \$550.05, which represented a rent payment for June of 2012. The Landlord contends these money orders have not been cashed. The Tenant contends that the Tenant has not, and cannot, cancel these money orders.

The Tenant is seeking a rent refund, in the amount of \$350.00 per month, for the duration of the tenancy. The Tenant contends that they would not have agreed to rent this unit if there had not been an agreement to purchase the property and that they would have remained in their previous home where they were only paying monthly rent of \$750.00. The Tenant is seeking compensation for the difference between the amount of rent they were paying at the rental unit and the amount they would have been paying if they remained in their original rental unit.

The Landlord contends that the Tenants entered into this agreement of their own free will and is not, therefore, entitled to compensation.

The Landlord is seeking compensation, in the amount of \$451.00, for cleaning the rental unit. The Landlord submitted a condition inspection report that was completed at the end of the tenancy and that was signed by the Tenant, which clearly indicates cleaning was required. The Landlord submitted photographs that show the rental unit required cleaning. The Agent for the Landlord stated that the Landlord and people known to the Landlord spent approximately 44 hours cleaning the rental unit, for which they are seeking compensation at an hourly rate of \$10.25.

The Tenant agrees that the rental unit was not left in clean condition, however she stated that it was not clean when they moved into the unit. She contends that it would have taken less than 44 hours to clean the rental unit.

The Landlord is seeking compensation for repairing a broken toilet. The male Landlord stated that toilet was leaking after the end of the tenancy, although it was not leaking when the rental unit was inspected at the end of the tenancy. The condition inspection report indicates that the toilet in the main bathroom was in "poor" condition and the toilet had been fixed.

The Tenant stated that they had a plumber repair the toilet in December of 2011 but the "flapper valve" still needed to be replaced. She stated that occasionally the toilet would "flush" automatically but it was not leaking at the end of the tenancy.

The Landlord is seeking compensation for repairing four doors that had been scratched by the Tenant's dogs. The condition inspection report indicates that the patio doors were scratched by dogs. The Landlord stated that the doors have not yet been repaired; that the Landlord will repair the doors himself; and that it will take at least four hours to repair the four doors.

The Tenant stated that she signed the inspection report without reading it; that she believes the doors were simply dirty; and she does not believe that the doors were scratched.

The Landlord is seeking compensation for repairing the hardwood floors in the living room and the bedroom. The Landlord contends the floors were in good condition at the start of the tenancy. The Landlord submitted no condition inspection report to establish the condition of the floors at the start of the tenancy. The Landlord did submit a receipt to show that the bedroom floor was replaced on September 12 of an unknown year. The Landlord contends that this flooring was replaced in September of 2009. The male Landlord stated that he refinished the floor in the living room in 2009. Receipts were submitted that corroborates this statement.

The Tenant stated that when they moved into the rental unit in July of 2010 the living room and bedroom floors were scratched. The Tenant submitted a letter from a male who helped the Tenant move into the rental unit, in which the male declared that the floors were in "horrible condition".

The condition inspection report that was completed at the end of the tenancy indicates the living room floor was scratched by dogs and there were multiple scratches on the bedroom floor. The Tenant noted on the report that she does not agree with the information contained on the condition inspection report as it pertains to the living room floor. She acknowledged that their bed scratched the bedroom floor.

The Landlord submitted photographs of the floor in the bedroom, which has scratches consistent with scratches made by a bed. The Landlord submitted photographs of the floor in the living room, which does not appear to have been recently refinished.

The Landlord is seeking compensation for repairing one broken window in the living room. The Tenant stated that this window was broken when they moved into the rental unit. The Landlord contends that all of the windows in the rental unit were replaced in 2009 and that the window that is the subject of this claim was broken, and replaced, prior to the start of this tenancy.

At the hearing the Landlord withdrew the claim for lost wages, in the amount of \$1,002.85; insurance costs, in the amount of \$560.00; and loss of revenue, in the amount of \$2,403.86.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into fixed term tenancy agreement; that the fixed term of the agreement ended on April 24, 2012; that the tenancy agreement required the Tenant to either vacate the rental unit or purchase the rental unit at the end of the fixed term; and that the Tenant neither vacated the rental unit or purchased the rental unit at the end of the fixed term.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a second fixed term tenancy agreement; that the fixed term of the agreement ended on May 31, 2012; that the tenancy agreement required the Tenant to vacate the rental unit; and that the Tenant did not vacate rental unit at the end of the fixed term.

I find that the Tenant submitted insufficient evidence to establish that the Tenant signed the second tenancy agreement "under duress". I find that the Tenant had the option of attempting to enforce the term of the first tenancy agreement that allowed them to purchase the rental unit; complying with the term of the first tenancy agreement that required them to vacate the rental unit on April 24, 2012; or entering into a new tenancy agreement, and that the Tenant opted to sign the new tenancy agreement. As the Tenant had options available, I cannot conclude that the second agreement was signed under duress and I find that the Tenant was obligated to comply with the terms of the second tenancy agreement.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant had a verbal agreement that the Tenant was only required to pay monthly rent of \$1,100.00 for July, August, and September of 2010. I find that the Tenant has submitted insufficient evidence to establish that the parties had a verbal agreement that the rent would remain at \$1,100.00 for the remainder of the tenancy.

In circumstances where parties do not agree that they have altered the terms of a written agreement, the terms of the written agreement stand unless there is a preponderance of evidence that contradicts those written terms. As there is no evidence to corroborate the Tenant's testimony that the amount of rent was not included on the original tenancy agreement when it was signed or that corroborates her testimony that they had a verbal agreement that rent would be \$1,100.00 for the duration of the tenancy, I find that the rent for the remainder of the tenancy was \$1,201.93, as stated in both tenancy agreements.

I find that the Tenant has submitted insufficient evidence to corroborate her testimony that the amount of rent was not on the first tenancy agreement when it was signed by the Tenant. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that corroborates this testimony or that refutes the Landlord's testimony that the amount of rent was on the first tenancy agreement when it was signed by the Tenant.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In the circumstances before me, I find that it is improbable that the parties would have signed a tenancy agreement that does not stipulate the amount of rent due, given the importance of that term of the agreement, particularly when the agreement appears to be properly completed in every other aspect, with the exception of the fact that the Tenant did not include a date below their signatures and the male Tenant's name and signature is not at the correct location.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant paid \$22,000.00 for the period between October 01, 2010 and May 31, 2012. As I have found that the rent was \$1,201.93, I find that the Tenant should have paid \$24,038.60. I therefore find that the Tenant owes the Landlord \$2,183.86 in unpaid rent.

As the Tenant agrees that the Tenant is obligated to pay the Landlord ½ month's rent for June of 2012, I find that the Tenant must pay the Landlord \$600.96 in rent for this period.

I find that the Tenant willingly entered into this tenancy agreement and was, therefore, obligated to comply with the terms of the agreement, including paying monthly rent in

the agreed upon amount. I have no jurisdiction to award compensation for losses that the Tenant may have incurred as a result of the Landlord failing to comply with an agreement to sell the rental unit to the Tenant and I therefore dismiss the Tenant's claim for a rent refund. In determining this matter I specifically note that there is no evidence that the parties agreed that a portion of the rent will be applied to the purchase price of the rental unit and I therefore assume jurisdiction over the tenancy.

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 undisputed evidence presented at the hearing, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. On the basis of the photographs and the condition inspection report that was submitted in evidence, I find it reasonable to conclude that the Landlord spent 44 hours cleaning the unit. I therefore find that the Landlord is entitled to compensation for the 44 hours spent cleaning the unit, at the hourly rate of \$10.25 as per the Landlord's claim, which is a total of \$451.00.

In awarding this claim I note that I have placed no weight on the Tenant's testimony that the rental unit required cleaning at the start of the tenancy. In the event that the Tenant believes the Landlord did not provide a reasonably clean rental unit at the start of the tenancy, the Tenant is entitled to file an Application for Dispute Resolution seeking compensation for the costs of cleaning the rental unit.

Section 32 of the *Act* requires a tenant to repair damage arising from the actions or neglect of the tenant or a person permitted on the property by a tenant. This section stipulates that a tenant is not obligated to make repairs for "reasonable wear and tear". I find that the Landlord has submitted no evidence to show that the Tenant damaged the toilet by action or neglect. As the Landlord has failed to establish the cause of the plumbing malfunction, I find that it is entirely possible that the toilet leaked due to normal wear and tear. I therefore dismiss the Landlord's claim for compensation for repairing the toilet.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report is evidence of the state of repair and condition of the rental unit unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report that was signed by both parties at the end of the tenancy indicates that only that the patio doors were damaged, I must conclude that the remaining doors were undamaged.

Although the Landlord submitted a photograph of one door with marks on it, I find that this photograph does not clearly show that the door is scratched, as opposed to dirty,

and I cannot, therefore, conclude that there is sufficient evidence to refute the information on the inspection report. I note that the Tenant submitted no evidence to corroborate her testimony that the patio doors were not damaged.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the patio doors that were scratched. As the Landlord intends to repair the doors by himself and he estimates it will take approximately 1 hour to repair each door, I find that the Landlord is entitled to compensation for the 2 hours he anticipates spending to repair 2 patio doors, at an hourly rate of \$20.00, which I find to be reasonable compensation for labour of this nature.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the living room floor during this tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as photographs or a condition inspection report completed at the start of the tenancy, that corroborates the Landlord's claim that the floor was in good condition at the start of the tenancy or that refutes the Tenant's testimony that the floor was not in good condition at the start of the tenancy. In reaching this conclusion I placed little weight on the evidence that the floor was refinished in 2009, as this tenancy did not begin until later in 2010, and could have sustained significant damage prior to the start of the tenancy. As the Landlord has failed to establish the condition of the living room floor at the start of the tenancy, I find that the Landlord has failed to establish that the floor was damaged during the tenancy. I therefore dismiss the Landlord's claim for compensation for repairing the living room floor.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant damaged the floor in the bedroom. On the basis of the photographs of this floor, I find that the damage is consistent with the type of damage that would occur when a bed is in continual contact with hardwood flooring. Given that it is reasonable for a Tenant to have a bed in a bedroom, I find that the scratches are consistent with the normal use of the room. I therefore find that the scratches on the bedroom floor constitute normal wear and tear. As the Tenant is not obligated to repair damage resulting from normal wear and tear, I dismiss the Landlord's claim for compensation for repairing the bedroom floor.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged a window in the living room floor during this tenancy. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as photographs or a condition inspection report completed at the start of the tenancy, that corroborates the Landlord's claim that the window was in good condition at the start of the tenancy or that refutes the Tenant's testimony that the window was broken prior to the start of the tenancy. In reaching this conclusion I placed little weight on the evidence that the windows were replaced in 2009, as this tenancy did not begin until later in 2010, and the window could have been damaged prior to the start of the tenancy. As the Landlord has failed to establish the condition of the windows at the start of the tenancy, I find that the Landlord has failed to establish that the window was

damaged during the tenancy. I therefore dismiss the Landlord's claim for compensation for repairing the window.

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. I find that the Tenant's application has been without merit and I dismiss the Tenant's application to recover the filing fee from the Tenant.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$3,375.82, which is comprised of \$2,784.82 in unpaid rent, \$451.00 for cleaning, \$40.00 for repairing two doors, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that this monetary claim must be reduced by the money orders that have been provided to the Landlord, in the total amount of \$550.05. Based on these determinations I grant the Landlord a monetary Order for the amount \$2,825.77. 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: July 17, 2012.

Residential Tenancy Branch