



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, DRI, FF

Introduction

This hearing was convened in response to cross applications.

On May 29, 2012 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 damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On May 18, 2012 the Tenant filed an Application for Dispute Resolution, in which the Landlord applied for the return of her security deposit; to dispute an additional rent increase; 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 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 a copy of the second tenancy agreement signed by the parties. The Landlord's evidence, with the exception of the second tenancy agreement, was accepted as evidence for these proceedings.

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 damage to the rental unit; whether the rent has been increased in accordance with the Residential Tenancy Act (Act); whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether either party is entitled to recover the fee for filing an Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the rental unit on June 01, 2009 and that they had a written tenancy agreement for this tenancy which required the Tenant to pay monthly rent of \$960.00.

The Landlord and the Tenant agree that the parties signed a second tenancy agreement for a fixed term tenancy that began on January 01, 2011 and ended on January 01, 2012, at which time their tenancy would continue on a month to month basis. This tenancy agreement required the Tenant to pay monthly rent of \$1,025.00. The Landlord contends that the parties entered into the second tenancy agreement because a male had moved into the rental unit, although he was not named on the second agreement. The Tenant contends that she entered into the second tenancy agreement because she believed the Landlord would end her tenancy if she did not agree to the rent increase.

The Tenant contends that the rent increase does not comply with the *Act* and she is seeking a rent refund of \$975.00.

The Landlord and the Tenant agree that the Tenant paid a \$480.00 security deposit on August 05, 2009; that the Landlord has not returned any portion of the security deposit; and that the Tenant did not authorize the Landlord to retain any portion of the security deposit.

The Landlord and the Tenant agree that the Landlord did not complete a condition inspection report at the start of the tenancy that began on June 01, 2009 and that they did not attempt to schedule a time to complete this report. The Landlord and the Tenant agree that the Landlord did not complete a condition inspection report at the start of the tenancy that began on January 01, 2012 and that they did not attempt to schedule a time to complete this report. The male Landlord stated that they were not aware they were required to complete a condition inspection report at the start of the tenancy.

The Landlord and the Tenant agree that this tenancy ended on May 01, 2012. The Tenant stated that she placed a document, on which she wrote her forwarding address, under the Landlord's door on April 30, 2012. The Landlord contends this document was not received. The Tenant submitted a letter from a male who stated that on April 30, 2012 he observed the Tenant write her forwarding address on a piece of paper and then slide the paper and other mail for the Landlord under the Landlord's door.

The Tenant stated that on April 15, 2012 the Landlord was served with a forwarding address, in writing, for the second time. The Landlord acknowledges receiving the Tenant's forwarding address on April 15, 2012.

The Landlord is seeking compensation, in the amount of \$49.68, for repairing a wall that was damaged in the rental unit. The Tenant agrees the wall was damaged and that she did not properly repair it. The Landlord submitted a receipt to show that materials were purchased for the repair, at a cost of \$49.68.

The Landlord is seeking compensation, in the amount of \$327.60, for cleaning the rental unit. The Landlord contends the rental unit required cleaning and the Tenant contends that the rental unit was left in clean condition. The Landlord submitted a receipt to show that they paid \$327.60, for cleaning the rental unit. The Landlord submitted no documentary evidence, such as photographs or a condition inspection report, to show that cleaning was required.

The Landlord is seeking compensation, in the amount of \$1,794.06, for replacing the carpet. The Landlord contends that the carpet was in good condition at the start of the tenancy and that it was “shredded” near the entrance to the rental unit at the end of the tenancy. The Tenant agrees was “shredded” near the entrance to the rental unit but she contends it was in this condition when she moved into the unit. The Landlord submitted no evidence to establish the condition of the carpet at the start of the tenancy.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a tenancy agreement that began on June 01, 2009; that this tenancy agreement required the Tenant to pay monthly rent of \$960.00 by the first day of each month; that their original agreement ended on December 31, 2010; that they entered into a second tenancy agreement that began on January 01, 2011; and that the second tenancy agreement required the Tenant to pay monthly rent of \$1,025.00 by the first day of each month.

I find that the Tenant has submitted insufficient evidence to show that she was coerced into signing the new tenancy agreement. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s concern that the Landlord would end the tenancy if she did not agree to the rent increase and by the fact that the Landlord did not have legal grounds to end the tenancy for this reason.

As the parties entered into a new tenancy agreement for January 01, 2011, I find that both parties were obligated to comply with the terms of their new agreement. As this was a new tenancy agreement and not simply an amendment of their previous agreement, I find that the newly agreed upon rent does not constitute a rent increase as defined by the Act. I therefore find that the Tenant was obligated to pay monthly rent of \$1,025.00, effective January 01, 2011, and I dismiss her application for a rent refund.

On the basis of the testimony of the Tenant and the letter she submitted in evidence, I find that the Tenant wrote her forwarding address on a piece of paper and slid the paper and other pieces of mail under the Landlord’s door on April 30, 2012. I note that sliding a document under the door is not one of the methods of serving a document outlined in

section 88 of the *Act*. As the Landlord did not acknowledge receiving the piece of paper and it is entirely likely that a piece of paper slid under a door could be lost or overlooked, I cannot conclude that the Landlord received the Tenant's forwarding address on April 30, 2012.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did receive the Tenant's forwarding address on May 15, 2012.

Section 23(3) of the *Act* requires landlords to offer the tenant at least two opportunities to inspect the rental and section 23(4) of the *Act* requires a landlord to complete a condition inspection report. On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did not schedule a time to inspect the rental unit when the tenancy began on June 01, 2009 or when they entered into a new tenancy agreement on January 01, 2011, and that the Landlord did not complete a condition inspection report at the start of either tenancy.

Section 24(2) of the *Act* stipulates that the Landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(3) of the *Act* and/or 23(4) of the *Act*. As I have concluded that the Landlord failed to comply with sections 23(3) and 23(4) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 24(2) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the Landlord has not yet returned the security deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double security deposit to the Tenant.

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 she failed to repair the wall that was damaged during the tenancy. 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*, which in these circumstances is \$49.68 to repair the wall.

I find that the Landlord 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 documentary evidence, such as photographs or a condition inspection report, that corroborates the Landlord's testimony that the rental unit required cleaning or that refutes the Tenant's testimony that the rental unit did not require cleaning. As the Landlord has failed to establish that the rental unit required cleaning, I dismiss the Landlord's claim for cleaning costs.

I find that the Landlord submitted insufficient evidence to show that the carpet was damaged 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, that corroborates the Landlord's testimony that the carpet was in good condition at the start of the tenancy or that refutes the Tenant's testimony that the carpet was "shredded" near the entrance to the unit when she moved into the rental unit. As the Landlord has failed to establish the condition of the carpet at the start of the tenancy, I find that the Landlord has submitted insufficient evidence to show that it was damaged during the tenancy. I therefore dismiss the Landlord's claim for replacing the carpet.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to recover the cost of filing the Tenant's Application for Dispute Resolution from the Landlord.

I find that the Landlord's Application for Dispute Resolution has some merit and I find that the Landlord is entitled to recover the cost of filing the Landlord's Application for Dispute Resolution from the Tenant.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,010.00, which is comprised of double the security deposit and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

I find that the Landlord has established a monetary claim, in the amount of \$99.68, which is \$49.68 in damages and \$50.00 in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

After offsetting these two awards, I find that the Landlord owes the Tenant \$910.32 and I grant the Tenant a monetary Order for this amount. 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: July 23, 2012.

Residential Tenancy Branch