



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On November 29, 2012 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied 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 September 26, 2012 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; for the return of the security deposit; 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 oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

The Landlord stated that the Application for Dispute Resolution, Notice of Hearing, and documents the Landlord wished to reply upon as evidence were sent to each Tenant, via registered mail, on November 29, 2012. The Tenant acknowledged that he and the other Tenant received these documents and they were accepted as evidence for these proceedings. The Tenant stated that the other Tenant is his wife and that he is representing her at these proceedings.

The Tenant stated that the Application for Dispute Resolution, Notice of Hearing, and documents the Tenant wished to reply upon as evidence were sent to the Landlord, via courier, on September 26, 2012. The Landlord acknowledged receipt of the documents, with the exception of the second page of the Application for Dispute Resolution, which he obtained from the Residential Tenancy Branch on November 29, 2012. I find that all of these documents were sufficiently served for the purposes of these proceedings and they were accepted as evidence for these proceedings.

The Tenant attempted to call his co-tenant as a witness but she was not available at the phone number provided for her.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit; should the security deposit be retained by the Landlord or returned to the Tenant; and is either party entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2005; that the Tenant paid a security deposit of \$597.50 on January 26, 2005; that the tenancy ended on July 31, 2012; that the Landlord received a forwarding address for the Tenant, in writing, on July 31, 2012; that the Landlord did not have written authority to retain any portion of the security deposit; that a condition inspection report was completed at the beginning of the tenancy; that a condition inspection report was completed at the end of the tenancy, a copy of which was submitted in evidence; that the condition inspection report that was completed at the end of the dated was incorrectly dated August 31, 2012; and that the Tenant did not agree that the final condition inspection report fairly represented the condition of the rental unit at the end of the tenancy.

The Landlord stated that a cheque for \$464.53, which represented the return of a part of the security deposit, was mailed to the Tenant on August 09, 2012. The Tenant stated that this cheque was received on, or about, August 15, 2012.

The Landlord is seeking compensation, in the amount of \$12.65, for replacing a light. The Landlord stated that the Tenant removed a dining room light during the tenancy; that the Tenant replaced the light with a different light; and that the Tenant took the dining room light with them when the tenancy ended. The Landlord is seeking compensation for the cost of installing a new light.

The Tenant stated that the Landlord's brother-in-law installed the new dining room light on behalf of the Tenant and that the brother-in-law took the old light with him after the new light was installed.

The Landlord stated that he does not recall that the Landlord removed the dining room light on behalf of the Tenant, and that if it was removed by the Landlord it would have been removed by him or his brother-in-law. The Witness, who is the building manager, stated that he recalls having a conversation about the dining room light but he cannot recall the nature of the conversation.

The Landlord is seeking compensation, in the amount of \$78.14, for replacing window coverings. The Landlord submitted a photograph of a curtain that is frayed and stained. The Landlord submitted a receipt to show that blinds were purchased, at a cost of \$69.77 plus tax. The Landlord stated that he determined it would be cheaper to replace the curtains than to repair them. The condition inspection report completed at the start of the tenancy shows the window coverings were new at the start of the tenancy.

The Tenant stated that he did not notice the stain or fraying prior to the end of the tenancy so he did not repair or clean the curtains. He stated that only 3" of the curtain is frayed and that the stain is probably water based and could be removed with cleaning.

The Landlord is seeking compensation, in the amount of \$230.16, for doors that were damaged during the tenancy. The Landlord submitted a photograph of a brown door that the Tenant had attempted to repair. The Tenant stated that there was a hook on this door at the start of the tenancy and that he repaired the door after the hook broke away from the door. The Landlord stated that there was never a hook on the door in this location. The Landlord and the Tenant agree that the door was damaged on the exterior side of the door.

The Landlord submitted a photograph of a light coloured door that the Tenant had attempted to repair. The Tenant stated that there was a towel rack attached to the door; that the towel rack fell off the door; and that the Witness told him to repair the door. The Witness stated that he never had a conversation with the Tenant regarding repairing the door.

The Tenant submitted a receipt for paint, in the amount of \$46.16, that was provided to the Tenant by the Landlord. The Landlord stated that this paint was used to paint the doors; that the repairs made by the Tenant were inadequate and had to be redone; and that the Landlord spent approximately 8 hours repairing and repainting the doors.

The Landlord is seeking compensation, in the amount of \$300.00, for repainting the patio. The Landlord contends that the Tenant painted the concrete floor and brick sides of the patio without permission from the Landlord, which then had to be repainted as the paint was peeling off. Photographs of the patio were submitted in evidence. The Landlord stated that he spent approximately 7 hours power washing and painting the patio. The Landlord did not provide receipts for the cost of paint for this repair.

The Tenant contends that the Witness gave them verbal permission to paint the patio. The Witness denies giving the Tenant permission to paint the patio.

The Landlord is seeking compensation, in the amount of \$112.00, for cleaning the rental unit. The Landlord submitted photographs of the rental unit that he stated were taken on July 31, 2012. The Landlord stated that the parties could not agree on the condition of the rental unit at the end of the tenancy so they each took photographs of the unit. The Landlord stated that the photographs fairly represent the condition of the rental unit at the end of the tenancy.

The Tenant stated that the photographs do not fairly represent the condition of the rental unit at the end of the tenancy. He stated that the stove was clean at the end of the tenancy; that the Landlord's photograph's "may not even be my stove"; and that the sinks and bathtub were clean. He stated that he took photographs of the rental unit with his phone and that they are no longer available.

The Tenant submitted a receipt for cleaning, in the amount of \$112.00, which was provided to the Tenant by the Landlord. The Landlord stated this amount was paid for cleaning the rental unit.

The Landlord is seeking compensation for costs of photocopying documents for these proceedings.

Analysis

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. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the full security deposit or file an Application for Dispute Resolution within fifteen days of July 31, 2012, which is when the tenancy ended and the Landlord received the Tenant's forwarding address in writing.

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(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid, plus interest due on the original amount.

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.

I find that the Landlord submitted insufficient evidence to establish that the Tenant removed the dining room light. In reaching this conclusion I was heavily influenced by the Tenant's testimony that the Landlord's brother-in-law removed the light and took it with him and by the absence of evidence from the Landlord's brother-in-law that refutes that testimony. While I accept that the Landlord does not recall this occurrence, I find it entirely possible that he was simply unaware of the actions of his brother-in-law at the time, or that he has forgotten that his brother-in-law removed the light. As the Landlord has failed to establish that the light was removed by the Tenant, I dismiss the claim for replacing the light.

I find that the curtains in the rental unit were frayed and stained during the tenancy. Residential Tenancy Policy Guidelines define reasonable wear and tear as "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion". While I accept that the fraying of the curtains may have been the result of normal wear and tear, I find that the staining does

not constitute normal wear and tear. I therefore find that the Tenant did not comply with section 37(2) of the *Act* when the Tenant did not remove the stain and that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and window coverings, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of window coverings is ten years. The evidence shows that the curtains were new at the start of the tenancy and approximately 7.5 years old at the end of the tenancy. I therefore find that the window coverings had depreciated by approximately 75%, and that the Landlord is entitled to 25% of the cost of replacing the window coverings, which I calculate to be \$19.54.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the brown door. I favour the Landlord's testimony that there was not a hook in the brown door where the door was damaged over the testimony of the Tenant, who stated that the damage to the door occurred when a hook fell out of the door. I favour the Landlord's evidence, in part, because it is extremely uncommon for a hook to be installed on the exterior side of a door. I was also heavily influenced by the photograph of the repair completed by the Tenant. In my view, the size of this repair is not consistent with the type of damage that would occur when a hook fell away from a door. I therefore find it reasonable to conclude that the door was damaged as a result of negligence or misuse, and I find that the Tenant is obligated to repair this door.

In the absence of evidence to the contrary, I find that the lighter coloured door was damaged when a towel rack fell off the door. As it is not uncommon for a towel rack or hook that is attached to a door to fall off with general use, I find it reasonable to conclude that the rack fell off due to normal wear and tear. As the Tenant is not obligated to repair damage that arises from normal wear and tear, I find that the Tenant is not obligated to repair the damage to this door. In my view the repairs that were attempted by the Tenant did not exacerbate the damage to the door.

In the absence of evidence to the contrary, I find that Landlord's estimate that he spent 8 hours repairing and repainting the doors is reasonable. As the Tenant is only obligated to repair one of the doors, I grant the Landlord compensation for four hours of labour, at an hourly rate of \$25.00, and ½ of the cost of the paint, which is \$22.58.

Residential Tenancy Branch Policy Guidelines suggest that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. I concur with this guideline. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant painted the patio and

failed to restore it to its original condition at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Witness gave the Tenant permission to paint the patio or that refutes the Witness' testimony that such permission was not granted.

In the absence of evidence to the contrary, I find that Landlord's estimate that he spent 7 hours power washing and repainting the patio is reasonable and I grant the Landlord compensation for seven hours of labour, at an hourly rate of \$25.00.

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 cost of the paint used to repaint the patio and I am, therefore, unable to award compensation for the cost of the paint.

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. In reaching this conclusion I was heavily influenced by the photographs submitted by the Landlord, which clearly show additional cleaning was required. I favour the testimony of the Landlord, who stated that the photographs fairly represent the condition of the rental unit at the end of the tenancy over the testimony of the Tenant, who stated that the photographs do not fairly represent the condition of the rental unit.

In reaching this conclusion I was influenced, in part, by the Tenant's statement that the photographs "may not even be my stove". In my view, a tenant who had left the stove in clean condition would have empathically denied leaving the stove in the condition of the stove depicted in the photograph.

In reaching this conclusion I was influenced, in part, by the absence of photographs or other documentary evidence that refute the accuracy of the photographs submitted by the Landlord.

In reaching this conclusion I was heavily influenced by the reasonableness of the Landlord's claim for cleaning. In my view, if the Landlord was motivated to fabricate evidence regarding the condition of the rental unit, he would have claimed compensation in a much greater amount. I find that the Landlord is entitled to the \$112.00 paid to clean the rental unit.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the Landlord's claim for compensation for photocopying costs.

I find that the applications of both parties have merit and they are therefore responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$1,216.13, which represents double the security deposit plus interest of \$21.13 on the original deposit. I find that this claim must be reduced by \$464.53, which has already been returned to the Tenant.

I find that the Landlord has established a monetary claim, in the amount of \$429.12, which includes \$19.54 for replacing a set of curtains; \$122.58 for repairing one door; \$175.00 for repainting the patio; and \$112.00 for cleaning.

After offsetting the two claims I find that the Landlord owes the Tenant \$322.48 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: December 17, 2012.

Residential Tenancy Branch