



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, 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 damage to the rental unit, to keep all or part 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 relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord stated that she served the application for dispute resolution package to the male Tenant, via registered mail, on March 16, 2013. The male Tenant acknowledged receipt of those documents. The female Tenant stated that she has viewed the documents that were mailed to the male Tenant.

The Landlord submitted documents to the Residential Tenancy Branch and she stated that on May 30, 2013 copies of those documents were delivered to the forwarding address provided by the Tenant. The male Tenant acknowledged receipt of the Landlord's documents on that date and they were accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch and he stated that on May 28, 2013 copies of those documents were delivered to the Landlord's mail box. The Landlord acknowledged receipt of the Tenant's documents and, with the exception of a DVD, they were accepted as evidence for these proceedings.

The Landlord stated that her computer is not currently working and that she has been unable to view the DVD. The DVD was not accepted as evidence as the Tenant has failed to ensure that the Landlord is able to access the DVD, as is required by the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to compensation for repairing the microwave and to retain part of the security deposit paid by the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 01, 2010; that the Tenant paid a \$1,087.50 security deposit and a \$500.00 pet damage deposit; that the tenancy ended on February 28, 2013; that the Tenant provided the Landlord with a forwarding address, in writing, on February 28, 2013; and that on February 28, 2013 the Landlord returned \$1,187.50 of the security/pet damage deposits.

The Landlord and the Tenant agree that the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy and that a condition inspection report was not completed at the start of the tenancy.

The Landlord and the Tenant agree that a condition inspection report was completed at the end of the tenancy, a copy of which was not submitted in evidence. The parties agree that in that report the Tenant agreed to pay for damaging the microwave, although the Tenant did not agree to a specific amount. The parties agree that the Tenant has not been provided with a copy of the condition inspection report.

The female Tenant stated that on September 09, 2012 she was defrosting some beef in the microwave when she noticed sparking; that she opened the microwave and determined that there was a small piece of metal on the beef packaging; that she noticed several small holes had been burned into the interior side of the door of the microwave; that the damage was reported to the Landlord; that the Landlord told her the microwave was still safe to use; and that she continued to use the microwave.

The Landlord stated that she told the Tenant she would not stand directly in front of the door but that it was likely safe to use as the holes did not penetrate both sides of the door. She stated that she provided the Tenant with the name of an appliance repair company but the damage was not repaired.

The Landlord submitted a receipt to show that she paid \$394.45 to repair the damaged microwave door and \$67.20 to repair damage to a grill cover. She stated that she does not know if the grill cover was damaged by the Tenant. She stated that she believes it was cheaper to repair the microwave rather than to replace it, as it would cost between \$400.00 and \$450.00 to purchase a new microwave and there would be installation costs.

The male Tenant argued the costs of repairs are excessive, although he submitted no evidence to corroborate that position.

Analysis

On the basis of the undisputed evidence I find that the Tenant paid a \$1,087.50 security deposit and a \$500.00 pet damage deposit; that the tenancy ended on February 28, 2013; that on February 28, 2013 the Landlord returned \$1,187.50 of the security/pet damage deposits; and that the only security deposit remaining in trust with the Landlord at the end of the tenancy was \$400.00.

Section 38(4) of the *Residential Tenancy Act (Act)* authorizes a landlord to retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the amount may be retained. As the Tenant did not agree on an amount that could be retained in compensation for the damage to the microwave door, I find that the Landlord did not have the right to retain \$400.00 of the security deposit in accordance with section 38(4) of the *Act*.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit that is caused by the actions or neglect of the tenant. As the female Tenant acknowledges that she accidentally damaged the door of the microwave, I find that the Tenant is obligated to repair that damage. I find that the Tenant failed to comply with section 32(3) of the *Act* when the Tenant failed to repair the microwave door. 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 \$394.45. In reaching this conclusion I note that a receipt was submitted to show the Landlord paid this amount and there was nothing submitted in evidence to corroborate the Tenant's position that the cost of the repair was excessive.

Section 23(3) of the *Act* requires a landlord to schedule a time to complete a condition inspection report at the start of each tenancy. Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against a security deposit for damage to the rental unit is extinguished if the landlord does not comply with section 23(3) of the *Act*. As the Landlord did not comply with section 23(3) of the *Act*, I find that she did not have the right to claim against the security deposit for damage to the microwave.

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 or make an application for dispute resolution claiming against the deposits. As the Landlord's right to claim against the security deposit for damage to the rental unit has been extinguished, the only option available to the Landlord in these circumstances is to return the security deposit. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the remaining \$400.00 of the security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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

\$800.00, which is double the security deposit that remained with her at the end of the tenancy.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$444.45, which is comprised of \$394.45 for repairing the microwave and \$50.00 for filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the \$800.00 she owes to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$355.55. 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: June 06, 2013

Residential Tenancy Branch

