



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stratatech Consulting Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, 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 money owed or compensation for damage or loss; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on June 22, 2013 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, to a forwarding address provided by the Tenant. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement. 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 the Tenant did not appear at the hearing.

The Agent for the Landlord stated that on September 17, 2013 additional documents the Landlord wishes to rely upon as evidence were mailed to the Tenant at the forwarding address provided by the Tenant. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and I accepted them as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for damage to the rental unit?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on September 01, 2010; that the Tenant paid a security deposit of \$925.00; that a condition inspection report was completed at the start of the tenancy; that the tenancy ended on May 31, 2013; that the

Tenant provided a forwarding address on April 22, 2013; that a condition inspection report was not completed at the end of the tenancy; that he could not schedule a time to inspect the rental unit with the Tenant at the end of the tenancy because the telephone number he had for the Tenant had been disconnected; that the Landlord did not provide the Tenant with written notice of a time to complete the condition inspection report at the end of the tenancy; and that he inspected the rental unit, in the absence of the Tenant, on June 03, 2013.

The Landlord is seeking compensation, in the amount of \$262.50, for repairing the gutters on the rental unit. The Agent for the Landlord stated that after this tenancy ended the neighbour told him that the Tenant had backed a moving van into the gutter. The Landlord submitted photographs of the damaged gutter and an estimate for the repair, in the amount of \$262.50.

The Landlord is seeking compensation, in the amount of \$816.50, for cleaning the rental unit, which includes removing a variety of property/furniture left in the rental unit, cleaning the carpets, and general cleaning. The Landlord submitted photographs that show the rental unit needed cleaning and that personal property and furniture was left in the unit. The Landlord submitted receipts to show that \$816.50 was paid to clean the unit and dispose of the property.

The Landlord is seeking compensation, in the amount of \$200.00, for repairing and painting the walls in the rental unit. The Agent for the Landlord stated that the rental unit was new and had only been occupied for a few months prior to the start of this tenancy. He stated that there were several holes and scratches on the walls at the end of the tenancy. The Landlord submitted photographs of the damaged walls and a receipt to show that \$200.00 was paid to repair and paint the walls.

Analysis

On the basis of the undisputed testimony and the photographs submitted in evidence, I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act* (Act) when the Tenant failed to repair the damage to the walls and gutters and when the Tenant 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. On the basis of the estimate and receipts submitted in evidence, I find that the Tenant must pay the Landlord \$1,279.00 in compensation.

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.

Section 35(2) of the Act stipulates that a landlord must offer tenant at least two opportunities to participate in an inspection of the rental unit at the end of the tenancy. Section 17 of the *Residential Tenancy Regulation* stipulates that a landlord must offer

the tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and, if the tenant is not available at the time offered, the landlord must propose a second opportunity, in writing, for a different time.

I find that the Landlord failed to comply with section 35(3) of the *Act*, as the Landlord did not propose a time for the inspection in writing. The Landlord had the ability to either post a scheduled time on the door of the rental unit or to mail it to the forwarding address that had been provided to the Landlord on April 22, 2013.

Section 36(2)(a) of the *Act* stipulates that the Landlord's right to claim against the security deposit or pet damage deposit for damage to the rental unit is extinguished if the landlord does not comply with section 35(2) of the *Act*. As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit for damage to the unit 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 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 36(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) 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 double the security deposit to the Tenant, which is \$1,850.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,329.00, which is comprised of \$1,279.00 in damages and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. This claim must be deducted from the \$1,850.00 that is owed to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for the amount \$521.00. 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: September 26, 2013

Residential Tenancy Branch

