



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On August 16, 2013 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 unpaid rent; 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. The male Landlord stated that the Landlord's Application for Dispute Resolution was served by registered mail. He is not certain of the date of service.

On June 24, 2013 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 security deposit. The Tenant stated that he served the Landlord with the Application for Dispute Resolution by registered mail. He is not certain of the date of service, but he believes it was mailed on, or about, June 25, 2013.

With the consent of both parties, the Tenant's Application for Dispute Resolution was amended to reflect the legal name of the female Landlord and the legal address of the rental unit.

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 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. The Landlord did not submit evidence.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and damage to the rental unit; is the Tenant entitled to compensation for living with mould in the rental unit; and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in October of 2012 and that the tenancy agreement required the Tenant to pay monthly rent of \$600.00 by the first day of each month; that the Tenant did not pay the rent that was due on July 01, 2013; that the Landlord served the Tenant with a Ten Day Notice to End Tenancy on July 01, 2013; and that the Tenant vacated the rental unit on July 10, 2013 or July 11, 2013. The Landlord is seeking compensation for the unpaid rent.

The Landlord and the Tenant agree that the Tenant paid a security deposit of \$250.00 and that the Tenant did not provide the Landlord with a forwarding address, in writing, until he mailed his Application for Dispute Resolution to the Landlord.

The Landlord is seeking compensation, in the amount of \$25.00, for replacing a broken shower head. The male Landlord stated that the threaded portion of the shower head was broken into two pieces at the end of the tenancy, and that he does not know how it broke. The Tenant stated that the shower head was in place at the end of the tenancy, but that it was cracked and was spewing water when the shower was in use.

The Landlord is seeking compensation, in the amount of \$30.00, for replacing a broken light cover in the kitchen. The male Landlord stated that he does not know how it broke. The Tenant stated that the cover did not fit properly and that it fell from the ceiling during an earthquake in January of 2013.

The Landlord is seeking compensation, in the amount of \$600.00, for replacing the fridge. The male Landlord stated that after the tenancy ended he discovered that a coolant line in the fridge had been cut. The Tenant stated that the fridge was working at the end of the tenancy and that he did not cut any lines in the fridge.

The Landlord is seeking compensation, in the amount of \$250.00, for washing the walls in the rental unit. The male Landlord stated that the rental unit smelled of cigarette smoke at the end of the tenancy and that he and the female Landlord spent 7 hours each washing the walls and ceilings. The male Landlord stated that the rental unit was advertised as a non-smoking unit and the Tenant was not permitted to smoke inside the rental unit.

The Tenant acknowledged that he smoked in the rental unit and that he did not wash the walls at the end of the tenancy. The Tenant stated that when he rented the unit he

told the Landlord he would smoke outside and the Landlord told him he could smoke inside if he wished.

The Tenant is seeking compensation for living with mould in the rental unit. The Landlord and the Tenant agree that the mould problem was reported to the Landlord and that the Landlord inspected the problem on January 22, 2013; that the Tenant washed the walls with borax, which removed the visible mould; that the mould was growing beside the mattress that the Tenant had on the floor of the bedroom; that the Landlord offered to purchase a used bed frame for the Tenant so that air could circulate more freely in this area; and that the Tenant did not purchase a bed frame.

The Landlord stated that when he inspected the rental unit on January 22, 2013 he found it very cold; he noted that the unit was being heated with one space heater; and he noted that none of the baseboard heaters were on. He contends that the temperature in the unit significantly contributed to the mould that was growing in the bedroom. The Tenant stated that he does use the baseboard heaters but he acknowledges that he keeps the temperature very low to save money.

The Tenant stated that the mould reappeared sometime in March of 2013; that he did not report the recurring problem to the Landlord; and that he reported it to Vancouver Coastal Health.

The Landlord stated that the mould problem was reported to him by Vancouver Coastal Health in February of 2013, at which time the Landlord agreed that he would pay the costs of heating the rental unit. He stated that he has paid the heating costs since March of 2013 and there have been no further problems with mould in the rental unit. The Tenant stated that he started using the heat more after the Landlord started to pay the costs.

The Tenant submitted a report from Vancouver Coastal Health that declares the unit was inspected on February 05, 2013; that the humidity in the unit exceeds the recommended range and could allow mould to grow; that there was mould present on an interior wall near the bed; that the wall was soft and deteriorating in this area; that the roof was in poor condition and could easily allow moisture to enter the building envelope; and that the owner of the unit has expressed concern that the mould is growing because the Tenant is not maintaining a reasonable temperature in the unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay rent of \$600.00 that was due on July 01, 2013. As he is required to pay rent when it is due, pursuant to section 24 of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$600.00 to the Landlord for rent from July of 2013.

Section 37(2) of the *Act* stipulates that tenants are not required to repair damage that is the result of normal wear and tear. As shower heads do deteriorate with time, I find that

the Landlord has submitted insufficient evidence to show that the damage to the shower head was not simply the result of normal wear and tear. In reaching this conclusion, I was influenced by the Tenant's testimony that the shower head spewed water when in use and by the absence of photographs or other evidence that would convince me that the shower head broke as a result of misuse or abuse. As the Landlord has failed to establish that the Tenant is obligated to repair the shower head, I dismiss the Landlord's claim for compensation for repairing the shower head.

I find that the Landlord submitted insufficient evidence to show that the Tenant damaged the light cover. In reaching this conclusion I was influenced by the Tenant's testimony that the cover did not fit properly and that it fell from the ceiling, and by the absence of photographs or other evidence that refutes this testimony. As the Landlord has failed to establish that the Tenant damaged the light cover, I dismiss the Landlord's claim for compensation for replacing the cover.

I find that the Landlord submitted insufficient evidence to show that the Tenant damaged the refrigerator. In reaching this conclusion I was influenced by the Tenant's testimony that he did not cut any lines in the refrigerator and by the absence of photographs or other evidence, such as a declaration from an appliance technician, which shows the refrigerator was willfully damaged. As the Landlord has failed to establish that the Tenant damaged the refrigerator, I dismiss the Landlord's claim for compensation for replacing the refrigerator.

Even if the Landlord did not explicitly prohibit smoking inside the rental unit, I find that the Tenant was obligated to make a reasonable effort to repair any damages arising from his decision to smoke inside the unit. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to wash the walls/ceiling at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the 14 hours spent washing the walls and ceiling, in the amount of \$250.00.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the temperature in the rental unit likely contributed to the presence of mould in the rental unit. In reaching this conclusion I was heavily influenced by the undisputed evidence that the mould did not return after March of 2013 when the Landlord stated paying the heating costs and the Tenant started keeping the unit warmer. Although the report from Vancouver Coastal Health indicates the humidity in the unit was high and that moisture could be entering the unit, it would appear that increasing the heat in the unit has resolved the problem.

I find that the Landlord acted reasonably and responsibly when mould was reported, initially by ensuring the affected area was cleaned and subsequently by taking steps to ensure a reasonable temperature was maintained in the rental unit.

As the Tenant likely contributed to the mould by not adequately heating the rental unit and the Landlord took reasonable steps to respond to the problem with mould, I find that the Tenant is not entitled to compensation for the presence of mould. I therefore dismiss his claim for a monetary Order.

Conclusion

The Landlord has established a monetary claim, in the amount of \$900.00, which is comprised of \$600.00 in unpaid rent, \$250.00 in damages, and \$50.00 for the cost of filing an Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$250.00, in partial satisfaction of this claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$650.00. 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: October 01, 2013

Residential Tenancy Branch

