



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed May 17, 2013: MND; MNSD; MNDC; FF

Tenant's application filed August 19, 2013: MNSD; FF

Introduction

This Hearing was scheduled to consider cross applications. The Landlords seek a monetary award for damage to the rental unit; compensation for damage or loss under the Act; regulation or tenancy agreement; to apply the security deposit towards partial recovery of the Landlords' monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of a portion of the security deposit and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony at the Hearing.

The Landlords' agent KW testified that the Landlords' Notice of Hearing documents and copies of the Landlords' documentary evidence were sent to the Tenant by certified mail on May 19, 2013. The Tenant acknowledged receipt of the documents.

The Residential Tenancy Branch received the Landlords' documentary evidence by fax; however, I advised the parties that the first 7 pages of the fax were missing. KW stated that the first seven pages were copies of the tenancy agreement, the Condition Inspection Report, and the Mutual Agreement to End Tenancy. The Tenant stated that she didn't receive the first 7 pages of the Landlords' documents either. The faxed material has page numbers on the top of the documents. The first page is numbered "8". Therefore, I found it probable that the first 7 pages were received by the Branch, but misplaced from the file. I ordered the Landlords to resubmit the documents to the Branch. The Tenant confirmed that she has copies of the documents.

The Tenant testified that she served the Landlords with her Notice of Hearing documents and copies of her documentary evidence by registered mail sent August 21, 2013. The Tenant provided a copy of the receipt and tracking number in evidence.

Preliminary Matters

The Landlords included a request for compensation for damage or loss in the Details of Dispute section of their Application for Dispute Resolution. Therefore, I amended their Application to include the dispute code MNDC, as it is clear from their Application that they sought this relief.

The Landlords' Application for Dispute Resolution contained a typographical error in the Dispute Address. I confirmed the correct spelling of the address with the parties and amended the Landlords' Application accordingly.

Issues to be Decided

- Is the Tenant entitled to a partial refund of the security deposit?
- Are the Landlords entitled to a monetary award for damages to the rental unit and if so, may the Landlords apply the security deposit in partial satisfaction of their monetary award?

Background and Evidence

The parties agreed to the following facts:

- This tenancy started on December 10, 2012.
- Monthly rent was \$950.00, due on the first day of each month.
- It was a six month fixed term tenancy ending on May 31, 2013. The tenancy ended on May 1, 2013, pursuant to a mutual agreement to end the tenancy.
- The parties met to do a condition inspection, but the Tenant didn't sign the Condition Inspection Report.
- The glass shower door was shattered when the Tenant took it down to clean it at the end of the tenancy.

The Landlord KW provided the following testimony:

KW testified that the Tenant paid a security deposit in the amount of \$475.00 at the beginning of the tenancy.

KW testified that the condition inspection was rushed because the Tenant was injured and bleeding from the shattered glass door. KW submitted that the glass broke when the Tenant took it off its track to clean it. She stated that the Tenant would not sign the agreement, so KW completed the report. The Landlords seek a monetary award in the amount of **\$344.40** for the cost of replacing the shower door. The Landlords provided a copy of the invoice in evidence.

KW testified that the Tenant left the rental unit before she had finished cleaning up the broken glass. KW stated that she spent ½ hour picking glass out of the lawn and patio. She stated that the Tenant had put many nail holes in the walls, which she had repaired, but that she spot painted over the holes with a different colour paint. The Landlords seek a monetary award for KW's time spent with respect to painting the walls, picking up the glass, and arranging to have the new shower glass installed, in the total amount of **\$245.00**. The Landlords provided a copy of KW's invoice in evidence.

KW testified that the painting materials cost **\$55.41**, which the Landlord seeks to recover from the Tenant. The Landlords provided a copy of the receipt in evidence.

KW testified that the parties had agreed that the Landlords would reimburse the Tenant \$140.00 for overpaid utilities at the end of the tenancy. She testified that the Landlord e-transferred the money into the Tenant's bank account, but the Tenant stated that she did not receive it. The Landlord submitted another e-transfer in the amount of \$140.00. KW stated that the Tenant accepted both e-transfers, one on April 26, 2013, and one on May 3, 2013. The Landlords seek to recover the overpayment in the amount of **\$140.00**. The Landlords provided a copy of a bank statement in evidence.

The Tenant MM provided the following testimony:

The Tenant testified that she paid a security deposit in the amount of \$575.00 at the beginning of the tenancy. She stated that she had a copy of the tenancy agreement, which indicated that the security deposit was \$575.00.

MM testified that the shower door had popped out of the tracks "20 or 30 times" over the course of the tenancy. She stated that the hardware was bent and that she had advised the Landlords, but nothing was done. She stated that it popped out again and shattered while she was cleaning it at the end of the tenancy. MM submitted that she left the hardware for KW to see and that she should not be held responsible for the glass being broken because it was due to a defect.

MM denied accepting the \$140.00 twice. MM provided a copy of her bank statement from April 24 to 29, 2013, in evidence.

MM stated that the Landlords did not supply any paint and that she thought the colour was close, but it dried darker than she expected. She stated that the Condition Inspection Report was changed and that the Landlord added the words "paint wrong colour" after the condition inspection was completed.

MM stated that she agreed that the Landlords were entitled to \$95.00 for repairs to the walls, as she had previously agreed. MM seeks return of the remainder of the security deposit in the amount of \$380.00.

KW gave the following reply:

KW denied that the shower door hardware was broken and stated that she has no recollection of the Tenant telling her that the door was popping out of its tracks. KW stated that the same hardware was used to install the new door and that her documents show that she delivered the original hardware to the glass installer for re-use.

Analysis

It is important to note that I made an Order during the Hearing that the parties each provide me with a copy of the tenancy agreement, because of the disagreement with respect to the amount of the security deposit. After I made the Order, the Tenant stated that she could be confused about the amount she paid. The Landlords provided a copy of the tenancy agreement after the Hearing, but the Tenant did not. Therefore, I find that the Tenant paid a security deposit in the amount of \$475.00, as confirmed in the tenancy agreement provided by the Landlords.

The Landlords are claiming for damage or loss and therefore the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlords have met the burden of proof with respect to the shower door. The Tenant provided no documentary evidence to support her submission that the shower door was broken at the beginning of the tenancy. The Tenant did not put a maintenance request in writing to the Landlord. I find it improbable that the door would have popped out “20 or 30 times” over the 5 month tenancy without the Tenant giving the Landlord written notice to repair the door. Therefore, I allow the Landlords’ claim for installing the new door in the amount of **\$344.40**.

The Tenant agreed that she was responsible for the cost of painting at the end of the tenancy. I find that the Landlords have established their claim in the amount of **\$55.41** for the cost of painting materials.

The documentary evidence provided by the Landlords indicates that the Landlords sent MM two e-transfers in the amount of \$140.00 each on April 25, 2013. The documentary evidence provided by the Tenant does not include transactions that were completed after April 29. MM’s evidence indicates that \$140.00 was accepted on April 26, 2013, but does not show transactions that occurred in early May, 2013. Therefore, I find it most probable that the Tenant accepted both of the e-transfers and I allow the Landlords’ claim in the amount of **\$140.00** for return of the overpayment of utilities.

KW’s invoice indicates that she billed the Landlord BC for her time at \$35.00 per hour. In addition, KW charged BC 2 hours of her time for “research glass quotes and received glass quotes. Deliver original hardware to glass people”. I find that this charge is not transferrable to the Tenant. A landlord can expect to receive some compensation from a tenant for time spent painting and cleaning; however, I find that \$25.00 per hour is a reasonable amount. Therefore, I allow this portion of the Landlords’ claim in the amount of **\$125.00** (5 hours x \$25.00 per hour).

The Landlords have established a monetary award, calculated as follows:

Replacement of shower door	\$344.40
Cost of paint	\$55.41
Return of overpayment of utilities	\$140.00
KW’s labour recoverable from the Tenant	<u>\$125.00</u>
TOTAL	\$664.81

The Landlords have been successful in their claim and I find that they are entitled to recover the cost of the filing fee from the Tenant.

Pursuant to the provisions of Section 72(1) of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary claim.

The security deposit has been extinguished and therefore the Tenant's application is dismissed in its entirety.

I hereby provide the Landlords with a Monetary Order, calculated as follows:

Monetary award	\$664.81
Recovery of filing fee	<u>\$50.00</u>
Subtotal	\$714.81
Less security deposit	<u>-\$475.00</u>
TOTAL	\$239.81

Conclusion

The Tenant's application is dismissed.

I hereby provide the Landlords with a Monetary Order in the amount of **\$239.81** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 20, 2013

Residential Tenancy Branch

