



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, MNR, MND, MNSD, SS, FF

Introduction

This hearing was convened in response to cross applications.

On December 05, 2013 the Tenant filed an Application for Dispute Resolution (#81####A), in which the Tenant applied to set aside a Notice to End Tenancy and to recover the fee for filing this Application for Dispute Resolution. The Tenant stated that she served this Application for Dispute Resolution to the Landlord, via regular mail, on December 05, 2013. The Landlord acknowledged receiving this Application for Dispute Resolution.

On January 10, 2014 the Landlord filed an Application for Dispute Resolution (#81####B), 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 or utilities; for a monetary Order for damage; to keep all or part of the security deposit; for authorization to serve documents in a different way than is required by the *Residential Tenancy Act* (Act); and to recover the fee for filing this Application for Dispute Resolution. The Landlord stated that she served this Application for Dispute Resolution and the amended version of this Application for Dispute Resolution to the Tenant, via registered mail, on January 13, 2014. The Tenant acknowledged receiving these documents.

On January 14, 2014 the Tenant filed an Application for Dispute Resolution (#81####C), in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of her security deposit; and to recover the fee for filing this Application for Dispute Resolution. The Tenant stated that she served this Application for Dispute Resolution to the Landlord, via registered mail, on January 15, 2014. The Landlord acknowledged receiving this Application for Dispute Resolution.

The Landlord submitted documents to the Residential Tenancy Branch on January 14, 2014. She stated that copies of these documents were served to the Tenant on January 14, 2014, when the Application for Dispute Resolution was mailed. The Tenant

acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch on January 15, 2014. She stated that copies of these documents were served to the Landlord on January 15, 2014, when her second Application for Dispute Resolution was mailed. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

During the hearing the Tenant advised that she has moved out of the rental unit and she no longer wishes to pursue her application to set aside a Notice to End Tenancy, as requested in Application for Dispute Resolution (#81####A). As the Tenant has abandoned her application to cancel the Notice to End Tenancy, which is the essence of Application for Dispute Resolution (#81####A), I dismiss this Application in its entirety, including the claim to recover the fee for filing the Application.

As the Landlord has been able to serve documents to the Tenant by registered mail, I find there is no need to consider the Landlord's application to serve documents in a different way than is required by the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid utilities and/or damage to 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 on September 15, 2013; that the Tenant agreed to pay monthly rent of \$1,425.00 by the first day of each month; that the Tenant agreed to pay 5/8 of hydro and gas charges incurred during the tenancy; that the Tenant paid a security deposit of \$712.00; that the Tenant paid a cleaning deposit of \$100.00; that the Tenant paid a utility deposit of \$200.00; that a condition inspection report was completed at the start of the tenancy; that the tenancy ended on December 30, 2013; that a condition inspection report was completed at the end of the tenancy; and that the Tenant provided the Landlord with a forwarding address, in writing, on December 30, 2013.

The Landlord submitted a gas bill for the period between November 06, 2013 and December 06, 2013, in the amount of \$184.68. The parties agree that the Tenant has not paid any portion of this bill and the Landlord is seeking compensation for 5/8 of this bill, which the parties agree is \$115.43.

The Landlord submitted a gas bill for the period between December 06, 2013 and January 08, 2014, in the amount of \$245.97. The parties agree that the Tenant has not paid any portion of this bill and the Landlord is seeking compensation for 5/8 of this bill, prorated for the period between December 06, 2013 and December 30, 2013 (25 days), which the Landlord contends is \$116.46.

The Landlord submitted a hydro bill for the period between November 06, 2013 and January 07, 2014, in the amount of \$395.02. The parties agree that the Tenant has not paid any portion of this bill and the Landlord is seeking compensation for 5/8 of this bill, prorated for the period between November 06, 2013 and December 30, 2013 (55 days), which the Landlord contends is \$219.46.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The Landlord stated that there were cobwebs in the windows and several areas needed dusting, including the blinds, a light fixture, and a heater. The Landlord stated that she spent approximately 3 hours cleaning the rental unit and she is seeking compensation for her time. The Landlord submitted photographs that show the windows and a heater needed dusting. She stated that the photographs were taken after the keys to the unit had been returned by the Tenant.

The Tenant stated that the photographs submitted in evidence were taken by the Landlord before she had finished cleaning and that she dusted the aforementioned areas after they were pointed out by the Landlord.

The Tenant submitted an unsigned copy of the condition inspection report that was completed at the end of the tenancy. She stated that she did sign the report but she was not provided with a copy of the signed report. The condition inspection report indicates that the windows/covering in the kitchen, living room, bedroom and bathroom required cleaning, and that light fixtures/ceiling fan/bulbs in the bathroom needed dusting. The Tenant stated that she cleaned these areas after the deficiencies were noted on the report. The Landlord stated that these areas were not cleaned by the Tenant after the report was completed.

The Landlord is seeking compensation, in the amount of \$12.00, for removing a padlock from a bedroom window. The Landlord stated that the padlock was not removed by the Tenant at the end of the tenancy. The Tenant stated that all the padlocks were removed at the end of the tenancy, upon the request of the Landlord.

The Landlord submitted a photograph of a window locked by a padlock, which the Tenant contends was taken before she left the unit and the Landlord contends was taken after the keys to the rental unit were returned.

The Landlord agrees that the condition inspection report that was completed at the end of the tenancy did not note that a lock had been left on the window. The Landlord stated that she simply forgot to make this notation.

The Landlord is seeking compensation, in the amount of \$275.00, to repair a variety of damage to the walls in the rental unit, including several holes in the wall and damage caused by affixing a "sticker" to the wall. The Landlord submitted photographs of several small repairs that had been made on the walls. The Tenant acknowledged that the photographs were accurate representations of repairs made to the wall by the Tenant at the end of the tenancy.

The Landlord stated that the walls have not yet been repaired and the claim for \$275.00 is based on a verbal estimate provided to her by the person she uses to repair her property.

The Landlord is seeking compensation, in the amount of \$200.00, to repair broken floor tiles. The Landlord stated that the tiles are approximately 20 years old; that they were not broken at the start of the tenancy; and that 4 tiles were broken at the end of the tenancy. The Landlord submitted photographs of the damaged tiles.

The Tenant stated that the tiles were broken at the start of the tenancy. The Tenant submitted a copy of the condition inspection report that was completed at the start of the tenancy, in which no damage to the floor tiles was noted.

The Tenant stated that when the condition inspection report was completed at the start of the tenancy she pointed out the damaged tiles to the Landlord and the Landlord stated that she was aware of the damage. The Landlord stated that they did discuss some damage to the tile floor at the start of the tenancy, but they were discussing a minor chip and not the damage depicted in the photographs.

The Landlord is seeking compensation, in the amount of \$200.00, to repair damage to a hardwood wall in the living room. The Landlord stated that the wall was in good condition at the start of the tenancy and was damaged at the end of the tenancy. The Landlord submitted a photograph of a large scrape on the wall.

The Tenant stated that the wall was damaged at the start of the tenancy. The Tenant submitted a copy of the condition inspection report that was completed at the start of the tenancy, in which no damage to the wall was noted. The Tenant stated that when the condition inspection report was completed at the start of the tenancy she simply did not notice this damage, although she did notice that an electrical outlet in this room was not functional and that was noted on the report.

The Tenant is seeking double the return of the security deposit paid on the basis that the security deposit was not returned within fifteen days after the tenancy ended.

Analysis

On the basis of the undisputed evidence, I find that the Tenant owes 5/8 of the gas bill of \$184.68, which is \$115.43.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay 5/8 of the prorated portion of the gas bill of \$245.97, for the period between December 06, 2013 and January 08, 2014. Given that the rental unit was vacated on December 30, 2013, I find that the Tenant must pay a portion of 25 days of this 33 day billing period (25/33), which is \$186.34. 5/8 of \$186.34 is \$116.46 and I find the Tenant owes this amount.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay 5/8 of the prorated portion of the hydro bill of \$395.02, for the period between November 06, 2013 and January 07, 2014. Given that the rental unit was vacated on December 30, 2013, I find that the Tenant must pay a portion of 55 days of this 63 day billing period (55/63), which is \$344.85. 5/8 of \$344.85 is \$215.53 and I find the Tenant owes this amount.

As the Tenant owes a total of \$447.42 for utilities and the Tenant has already provided the Landlord with a utility deposit of \$200.00, I find that the Tenant must pay the Landlord another \$247.42 for utilities.

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 Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. In reaching this conclusion I was influenced by the condition inspection report that was submitted in evidence by the Tenant, which corroborates the Landlord's testimony that additional cleaning was required. Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary. As the Tenant has submitted no evidence to corroborate her testimony that the areas that needed cleaning that were noted on the condition inspection report were cleaned after the report was completed, I find it reasonable to rely on the information contained in the condition inspection report.

In determining that additional cleaning was required, I placed some weight on the photographs submitted in evidence, essentially for the purpose of determining that at least some of the cleaning deficiencies noted on the condition inspection report were reasonable.

I find that the Landlord is entitled to compensation for the 3 hours she spent the cleaning the rental unit, in the amount of \$60.00. This is based on an hourly wage of \$20.00, which I find to be reasonable for labour of this nature.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant left a padlock on a bedroom window and I dismiss the claim for removing the padlock. In reaching this conclusion I was heavily influenced by the absence of any reference to this deficiency on the condition inspection report that was completed at the end of the tenancy. In accordance with section 21 of the *Residential Tenancy Regulation*, I therefore find it reasonable to conclude that the lock had been removed.

Although the Landlord did submit a photograph of a padlocked window, I do not consider this to be a preponderance of evidence to the contrary of the information on the report, as the parties disagree on when that photograph was taken.

On the basis of the undisputed testimony and the photographs submitted in evidence, I find that the repairs the Tenant made to the walls were unprofessional, and that additional repairs were required as a result of the attempt to repair the walls. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the walls undamaged.

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 true cost of repairing the damage to the walls. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$275.00 to repair the walls.

I award nominal damages of \$1.00 for the damaged walls. These nominal damages are simply intended to acknowledge that the Tenant has failed to comply with the *Act* and are not intended to compensate the Landlord for the actual loss suffered.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the floor tiles were not cracked at the start of the tenancy. I find that the Tenant's testimony that the floor tiles were cracked is not sufficient to discount the information on the report, given that the Landlord disputes the testimony and there is no evidence to corroborate the Tenant's testimony.

As there is no dispute that the tiles were cracked at the end of the tenancy, I find that the tiles were damaged during the tenancy. On the basis of the photographs submitted in evidence, however, I cannot conclude that the tiles were cracked as a result of the abuse or neglect of the Tenant. In reaching this conclusion I was heavily influenced by the nature of the damage to the tiles depicted by the photographs, which is more consistent with structural failure than abuse or neglect. Tiles that are damaged by abuse or neglect typically have damage that is consistent with something being dropped. It does not appear that these tiles have been damaged by something being dropped and I can, therefore, not conclude that the Tenant caused this damage. I find it entirely possible that these tiles have been damaged as a result of structural failure, which would constitute normal wear and tear.

As tenants are not obligated to repair damage that results from normal wear and tear and the Landlord has submitted insufficient evidence that the tiles were damaged by the actions or neglect of the Tenant, I find that the Tenant is not obligated to repair the tiles that were damaged during the tenancy.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the hardwood wall in the living room was not damaged at the start of the tenancy. I find that the Tenant's testimony that the damage was simply not noticed is not sufficient to discount the information on the report, given that the Landlord disputes the testimony and there is no evidence to corroborate the Tenant's testimony. In reaching this conclusion I note that a broken electrical outlet was noted on the report, which causes me to conclude that the report was reasonably detailed.

As there is no dispute that the wall was damaged at the end of the tenancy, I find that the wall was damaged during the tenancy and that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair this damage. I find that the Landlord failed to establish the true cost of repairing the damage to this wall. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$200.00 to repair the walls.

I award nominal damages of \$1.00 for the damage to this wall. These nominal damages are simply intended to acknowledge that the Tenant has failed to comply with the *Act* and are not intended to compensate the Landlord for the actual loss suffered.

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 the circumstances before me, I find that the Landlord complied with section 38(1) of the *Act*, as the Landlord filed an Application for Dispute Resolution within the fifteen day time limit.

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 comply with section 38(1) of the *Act*, I dismiss the Tenant's application for double the security deposit.

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.

I find that the Tenant did not need to file Application for Dispute Resolution #81####C, as any security deposit refund would have been refunded on the basis of the Landlord's

Application for Dispute Resolution and the Tenant has failed to establish that she is entitled to double the deposit. I therefore dismiss the Tenant's application to recover the fee for filing Application for Dispute Resolution #81####C.

Conclusion

The Landlord has established a monetary claim, in the amount of \$359.42, which is comprised of \$247.42 in unpaid utilities; \$60.00 for cleaning; \$2.00 in nominal damages; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the security deposit, in full satisfaction of this monetary claim.

Based on these determinations I grant the Tenant a monetary Order for the remainder of the security deposit and cleaning deposit, which is \$452.58. 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: January 28, 2014

Residential Tenancy Branch

