



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 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; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; to serve documents in a different manner, and to recover the fee for filing this Application for Dispute Resolution.

The male Landlord stated that two copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant with the initials "H.P." on July 18, 2013, at which time he asked her to provide one copy to the other Tenant. He stated he only had an address for this Tenant after the tenancy ended.

The Tenant with the initials "H.P." stated that she did receive two copies of the Application for Dispute Resolution and Notice of Hearing from the Landlord and that she did serve one copy to the other Tenant, although the Landlord did not ask her to do so.

The Tenant with the initials "A.B." stated that she has moved to Alberta and she did not receive the Application for Dispute Resolution and Notice of Hearing until August 30, 2013.

On the basis of this undisputed evidence, I find that the Tenant with the initials "H.P." was properly served with the Application for Dispute Resolution and Notice of Hearing, pursuant to section 89(1)(a) of the *Residential Tenancy Act (Act)* and the other Tenant has been sufficiently served with these documents on August 30, 2013, pursuant to section 71(2)(c) of the *Act*.

The Landlord submitted 36 documents and 41 photographs to the rental unit on October 15, 2013. The male Landlord stated that a copy of this evidence package was personally served to the Tenant with the initials "H.P." on October 15, 2013. The male Landlord stated that there was a delay in serving this evidence because it took him a long time to prepare the documents.

The Tenant requested an adjournment for the purposes of considering and responding to the evidence submitted by the Landlord. The parties agree that the Tenant with the initials "H.P." was listed on the tenancy agreement as a guarantor, that she did not live in the rental unit, and that the Tenant with the initials "A.B." is the person who occupied the unit. The Tenant with the initials "A.B." said that she returned from Alberta to participate in these proceedings and that October 24, 2103 was her first opportunity to view the photographs.

The Landlord opposed the application for an adjournment because he believes the evidence package was served within the timelines established by the legislation and because the Tenant with the initials "H.P." had sufficient time to mail the evidence package to The Tenant with the initials "A.B.".

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure required the Landlord to serve each Tenant with details of the monetary claim and any evidence that was available to be served at the time the Application for Dispute Resolution was served. I find that the Landlord failed to comply with this rule, as a detailed list of the alleged damages to the rental unit was not provided to the Tenant until October 15, 2013.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure permit the service of evidence that cannot be served with the Application for Dispute Resolution, providing it is served on the respondent as soon as possible, and at least (5) days before the dispute resolution hearing. While I find that the Landlord did comply with this deadline, I find that much of the evidence, including the photographs, the tenancy agreement, the condition inspection report, and the detailed list of damages could have been served to the Tenant with the Application for Dispute Resolution.

In my view, the late service of evidence places the Tenant at a significant disadvantage in these proceedings, as the Tenant only had 7 days to respond to the evidence submitted by the Landlord, while the Landlord had over three months to prepare for the hearing. In the interests of providing the Tenant with a reasonable and fair chance to respond to the claims being made by the Landlord, I granted the application for an adjournment.

At the hearing on October 24, 2013 both Tenants confirmed that any documents regarding this matter could be mailed to the service address for the Tenant on the Application for Dispute Resolution. As the Landlord has a proper service address, I find the Landlord has the ability to serve documents to the Tenant and there is no need to consider the Landlord's application to serve documents in a different manner

The hearing was reconvened on December 12, 2013 and was concluded on that date. Both parties were represented at both hearings. 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.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the correct spelling of the first name of the Tenant with the initials "A.B."

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent and utilities; to compensation for damage to the rental unit; and to retain all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 01, 2012; that the Tenant agreed to pay monthly rent of \$1,560.00 before the first day of each month; that the Tenant paid a security deposit of \$780.00; that a condition inspection report was completed on December 31, 2011; that the tenancy ended on June 30, 2013; and that a condition inspection report was completed on July 04, 2013.

The Landlord is seeking compensation for unpaid rent for the first four days of July. The Landlord contends that the Tenant left a television, some shelves, and some garbage in the rental unit and the Tenant contends that only a television was left in the rental unit and that the remainder of their property was removed by June 24, 2013. The Landlord stated that the rental unit was not re-rented until August 20, 2013.

The Landlord is seeking compensation for the 23.75 hours spent cleaning the rental unit and supplies used to clean the rental unit. The Landlord submitted photographs of the rental unit that were taken on July 05, 2013, which the Landlord contends represent the condition of the rental unit at the end of the tenancy. The Tenant submitted photographs of the rental unit that were taken on June 25, 2013, which the Tenant contends represent the condition of the rental unit at the end of the tenancy.

The Tenant with the initials "H.G." acknowledged that the cupboards had not been properly cleaned out and the space behind the fridge had not been cleaned. She stated that the mould on the window sills was present at the start of the tenancy.

The Witness for the Tenant stated that she is a professional cleaner; that she viewed the unit at the end of the tenancy; and that in her opinion the unit was as clean as it could be for the age of the unit.

The Landlord submitted receipts to show that the Landlord paid \$49.00 for cleaning supplies.

The Landlord is claiming compensation, in the amount of \$40.00, for mowing the lawn at the end of the tenancy, which the male Landlord stated took approximately 2 hours to mow. The parties agree that the Tenant was required to mow the lawn during the tenancy. The Landlord submitted a photograph of the back yard which shows that the lawn needs to be mowed, which the Landlord contends was taken on July 04, 2013. The Tenant with the initials "A.B." stated that the Landlord's photograph was taken when she was still living in the rental unit and that she last mowed the lawn on June 26, 2013.

The Landlord is claiming compensation for replacing the carpet in the living room and three bedrooms. Both parties submitted photographs that show the carpets were stained in numerous places at the end of the tenancy. The Landlord contends that the carpets were not stained at the start of the tenancy and the Tenant contends they were stained at the start of the tenancy.

The Landlord estimates the carpet in the living room was five years old and the rest of the carpets were 15-20 years old. The Tenant with the initials "H.P." stated that the carpet in the living room was replaced by her father approximately 15 years ago and that the rest of the carpets were approximately 20 years old.

The Landlord is claiming compensation for repainting several walls, in the amount of \$700.00, which were damaged by graffiti. The Tenant does not dispute that walls were damaged by graffiti during the tenancy. The Landlord submitted photographs of several walls that had been damaged by graffiti.

The male Landlord estimates the rental unit was last painted 4.5 years prior to the end of the tenancy. The Tenant with the initials "A.B." stated that the Landlord told her that the previous Tenant lived in the rental unit for approximately five years and that the unit had not been painted since that Tenant lived in the unit. The Landlord submitted receipts to show that the Landlord paid \$748.65 to paint the walls.

The Landlord is claiming compensation for replacing blinds in the master bedroom, in the amount of \$60.00, which the Landlord contends were damaged during the tenancy. The Tenant contends that the blinds were broken prior to the start of the tenancy so they were replaced during the tenancy, and that the damaged blinds were left in the rental unit at the end of the tenancy.

The male Landlord stated that he spoke with a salesperson at a big box store who told him it would cost \$341.55 to replace the blinds. The Landlord did not submit a written estimate from this individual, although he did record the information she provided. He stated that he is only claiming \$60.00 for the cost of replacing the blinds as the blinds were not new at the start of the tenancy.

The Landlord is claiming compensation for replacing a broken window in the master

bedroom. The Tenant does not dispute this claim. The Landlord submitted a receipt to show that the Landlord paid \$176.96 to replace the window.

The Landlord and the Tenant agree that the Tenant was required to pay for water, garbage/recycling, and sewage. The Landlord withdrew the claim of \$269.38 for the water bill.

The Landlord submitted a sewage bill for \$369.01. The Landlord is seeking compensation, in the amount of \$182.46, for a prorated portion of this bill. The Tenant stated that she believes she paid this bill, in advance, in July of 2012 when she paid the Landlord \$200.00. The Landlord stated that he recalls the Tenant paying approximately \$200.00 in July of 2012, which he believes was for sewage consumption in 2012.

The Landlord submitted a property tax notice which shows \$136.00 has been charged for garbage/recycling. The Landlord is seeking a prorated portion of this bill, in the amount of \$67.98. The Landlord contends that this bill has not been paid and the Tenant contends that the \$200.00 that was made in July of 2012 was applied to this bill.

The Landlord has claimed compensation for gas and time spent travelling to the rental unit.

At the hearing the Landlord withdrew the claim for replacing a sink stopper, light bulbs, closet door hardware, and a door handle.

Analysis

I find that the rental unit was vacated by June 30, 2013, although there was a small amount of personal property left in the rental unit. As the rental unit was not occupied by the Tenant in July, I find that the Tenant is not obligated to pay rent for any portion of July. Although the Tenant did leave some personal property at the rental unit, I find that the property did not prevent the Landlord from re-renting the unit and I therefore find that the Tenant is not obligated to compensate the Landlord for lost revenue for any portion of July. In reaching this decision I note that the Landlord had the right to treat the items left at the rental unit as abandoned property and to dispose of it in accordance with the *Act*.

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.

On the basis of the photographs submitted by the Tenant, I find that many areas of the rental unit were left in the reasonably good condition. On the basis of the photographs submitted by the Landlord and the condition inspection report that was completed at the end of the tenancy, I find that several areas on the rental unit still required cleaning, such as the window and window sills, the interior of the cupboards, and the linoleum. This decision is supported, to some degree, by the testimony of the Tenant with the initials "H.P.", who acknowledged the cupboards had not been wiped out.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In determining this matter I have placed significant weight on the condition inspection report that was completed at the start of the tenancy, which indicates the windows and window coverings were in good condition at the start of the tenancy. I find this evidence to be more compelling than the testimony of the Tenant with the initials "H.P.", who stated that the window sills had mould on them at the start of the tenancy. In my view, if the window sills had been mouldy at the start of the tenancy, it would have been noted on the condition inspection report, which is very detailed.

In determining this matter I have placed limited weight on the testimony of the Witness for the Tenant, who stated that the rental unit was as clean as it could be for the age of the unit, as I find it is not supported by the photographs submitted by the Landlord. In my view, wiping cupboards, cleaning windows, and cleaning floors is largely unrelated to the age of a home.

I find that the Tenant failed to comply with section 37 of the *Act* when the rental unit was not left in reasonably clean condition and I find that the Landlord is entitled to compensation of \$642.75 for cleaning the unit. This award includes compensation for time spent cleaning the unit and cleaning supplies.

I find that the Tenant failed to comply with section 37 of the *Act* when the lawn was not mowed at the end of the tenancy and I find that the Landlord is entitled to compensation for the time spent mowing the lawn, in the amount of \$40.00. In reaching this conclusion I was heavily influenced by the condition inspection report which indicates the grass needed cutting and by the photographs submitted in evidence by the Landlord. I find this evidence more reliable than the Tenant's testimony that the grass had been cut on June 24, 2013.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the carpet was not stained at the start of the tenancy. I find this to be more reliable than the Tenant's testimony that they were stained at the start of the tenancy. On the basis of the photographs submitted by both parties, I find there was significant staining on the carpet at the end of the tenancy. I therefore find that the

Tenant failed to comply with section 37 of the *Act* when the Tenant failed to remove the stains at the end of the tenancy.

Claims for compensation for damage to a rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures, a claim for damage and loss is based on the depreciated value of the fixture and not the replacement cost. This is to reflect the useful life of fixtures, such as carpet and paint, which are depreciating all the time through normal wear and tear.

The undisputed evidence is that the carpets in the house, with the exception of the living room carpet, were at least fifteen years old. In the absence of evidence that clearly corroborates the Landlord's position that the living room carpet was 5 years old or the Tenant's position that it was 15 years old, I am unable to determine the age of this carpet. I therefore find it reasonable to conclude that the carpet in the living room was approximately 10 years old, which is the average of the two positions. On the basis of the photographs submitted in evidence, I find that it is reasonable to conclude that the living room carpet was 10 years old.

The Residential Tenancy Branch Policy Guidelines show the life expectancy of carpet is ten years. I therefore find that the carpets have exceeded their life expectancy and that the Landlord is not entitled to compensation for replacing the carpets.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when the Tenant failed to leave the walls in reasonably clean condition at the end of the tenancy.

I find the testimony of the male Landlord, who estimated the walls in the unit had been painted 4.5 years prior to the end of the tenancy, is more reliable than the Tenant's estimate. The Tenant's estimate is based on information that was allegedly provided to her by the Landlord, which is subject to the frailties of miscommunication.

The Residential Tenancy Branch Policy Guidelines show the life expectancy of paint is five years. I therefore find that the paint in the unit has depreciated by 90 percent and that the Landlord is only entitled to 10 percent of the cost of painting the rental unit, which is \$74.87.

On the basis of the condition inspection report that was completed at the start of the tenancy, I find that the blinds in the master bedroom were not damaged at the start of the tenancy. I find this to be more reliable than the Tenant's testimony that they were damaged at the start of the tenancy. On the basis of the undisputed evidence, I find the blinds were damaged at the end of the tenancy. I therefore find that the Tenant failed to comply with section 37 of the *Act* when the Tenant failed to repair the blinds.

I find that the Landlord submitted insufficient evidence to show that it cost \$60.00 to repair or replace the damaged blinds. In reaching this conclusion I was heavily influenced by the absence of a receipt or an estimate written by a supplier. As the

Landlord has submitted insufficient evidence to establish the cost of the repair, I dismiss the Landlord's claim for repairing or replacing the blinds.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37 of the *Act* when the Tenant failed to repair the window that was broken during the tenancy. I therefore find that the Tenant must compensate the Landlord for the \$176.96 the Landlord paid to replace the window.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay sewage charges incurred during the tenancy and that charges of \$369.01 were incurred for sewer in 2013. As the Tenant occupied the rental unit for 6 months in 2013, I find that the Tenant must pay 50 percent of this bill, which is \$184.51. As the Landlord has claimed compensation of \$182.46, I find that the Landlord is entitled to compensation in this amount. I am unable to award compensation in a greater amount, as the Landlord did not claim compensation for a greater amount.

On the basis of the undisputed evidence, I find that the Tenant is obligated to pay garbage fees incurred during the tenancy and that charges of \$136.00 were incurred for garbage between July 01, 2012 and July 01, 2013. As the Tenant occupied the rental unit for this entire period, with the exception of July 01, 2013, I find that the Tenant is obligated to pay the majority of this bill. As the Landlord has claimed compensation of \$67.98, I find that the Landlord is entitled to compensation in this amount. I am unable to award compensation in a greater amount, as the Landlord did not claim compensation for a greater amount.

Although I accept that the Tenant paid approximately \$200.00 to the Landlord in July of 2012, I find it likely that this payment would have been for utility charges from 2012. I find it highly unlikely that this payment would have been for charges from 2013, as bills are not normally paid prior to the charges being incurred.

I find that the Landlord is not entitled to compensation for travel costs, as those are business costs typically absorbed by a Landlord who opts to conduct business from a different location.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,235.02, which is comprised of \$1,185.02 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$780.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$455.02. 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: December 30, 2013

Residential Tenancy Branch