



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

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.

On March 03, 2014 the Landlord submitted documents and photographs to the Residential Tenancy Branch. The Landlord stated that copies of these documents and photographs were placed in the Tenant's mail box on March 04, 2014. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Although the Landlord's evidence was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure, it was accepted as evidence as it is highly relevant to this claim. The Tenant was provided with the opportunity to request an adjournment to provide her with additional time to consider the Landlord's evidence; however she stated that she did not require additional time.

The parties were given the opportunity to settle this dispute without a formal hearing; however a settlement agreement that was acceptable to both parties could not be reached.

Preliminary Matter

The Landlord was advised that her claim for damages was restricted to the items listed on the Application for Dispute Resolution. The decision to limit the claim to these items was based on section 59(2)(b) of the *Residential Tenancy Act (Act)*, which stipulates

that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

In my view, considering claims not included in the Application for Dispute Resolution would be prejudicial to the Tenant as the lack of prior notice makes it difficult for the Tenant to respond to those claims. This decision is based, in large part, on the fact that the Landlord filed this Application for Dispute Resolution on December 04, 2013 and she did not notify the Tenant of any additional claims until the day before the hearing.

Issue(s) to be Decided

Is the Landlord entitled 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 approximately 9 years ago; that a condition inspection report was not completed at the start of the tenancy; that the tenancy ended on October 31, 2013; and that a condition inspection report was not completed at the end of the tenancy.

The Landlord and the Tenant agree that a security deposit of \$550.00 was paid. Although neither is certain of the date it was paid, they agreed that March 01, 2005 was a reasonable estimate for the date it was paid. The Tenant stated that she provided the Landlord with a forwarding address sometime in December of 2013. The Landlord stated that she received a forwarding address for the Tenant in the mail. The Landlord cannot recall precisely when she received the forwarding address but the envelope was stamped by Canada Post on December 04, 2013.

The Landlord is seeking compensation for repairing water damage to an interior wall of the rental unit. The Landlord stated that rain water leaked through the exterior wall into a bedroom in the rental unit, causing damage to the interior wall. She is seeking compensation from the Tenant for the damage as the damage was not reported in a timely manner.

The Tenant stated that she used this bedroom for storage; that she had personal property stored against the water damaged wall; and that she did not notice the damage until she moved that property when she moved out of the rental unit.

The Landlord is seeking compensation for repairing a light fixture in the entry and a heater in the kitchen. The Landlord does not allege that these fixtures were abused or misused by the Tenant, however she is seeking compensation from the Tenant for the damage as the malfunction was not reported in a timely manner. The Tenant does not dispute that these fixtures stopped working at some point in the tenancy.

The Landlord is seeking compensation for repairing three window coverings that were damaged during the tenancy. The Landlord estimated that it will cost \$35.97 to replace each set of venetian blinds and \$28.97 to replace the roller blind.

The Tenant stated that one set of blinds was damaged when someone broke into the rental unit and that the blinds in one room were accidentally damaged during the tenancy. The Tenant stated that she rarely used the roller blind and she did not notice it was damaged until she viewed the photographs of the blind that were submitted in evidence by the Landlord.

The Landlord is seeking compensation for repairing the clips that hold the bathroom window screen in place. The Tenant acknowledged that the clips that hold the bathroom screen in place did not work well at the end of the tenancy.

The Landlord is seeking compensation for repairing the window locks on three windows, which are approximately 15 years old. The Tenant acknowledged that the window locks were broken, which she speculates occurred as a result of normal use.

The Landlord is seeking compensation for repairing the latch on a screen door. The Tenant acknowledged that the latch did not work properly, which she contends is because the door is old.

The Landlord is seeking compensation for replacing the glass from one of the screen doors. The Landlord stated that there was glass in the door at the start of the tenancy and the Tenant stated that there was never glass in the door.

The Landlord is seeking compensation for removing wood that was left in the yard by the Tenant. The Tenant acknowledged that there was wood left in the yard. The Landlord stated that the wood has not yet been removed from the yard, as she was waiting for the Tenant to return and remove the wood.

Analysis

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; establishing 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.

Section 32(3) of the *Act* stipulates that a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. In some circumstances a tenant would be liable for damage to a rental unit as a result of leaking water, even if the Tenant did not cause the leak, if the tenant was aware of the problem and failed to report it to the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the Tenant was aware that water was leaking into the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence to refute the Tenant's testimony that she was not aware of the water leak until she moved her property in preparation for moving. As I have insufficient evidence to show that the Tenant was aware of the leak prior to the end of the tenancy, I find that she is not obligated to compensate the Landlord for any damage arising from a delay in detecting the leak.

A tenant would only be liable to repair damage arising from a delay in reporting a problem that the tenant was aware of if the delay in reporting resulted in additional damage to the rental unit. As there is no evidence that the Tenant misused the light in the entry or the heater in the kitchen, I find she is not obligated to repair them. I find that the Landlord has submitted no evidence to show that the delay in reporting the problem with these fixtures resulted in a loss to the Landlord. As the Landlord has suffered no greater loss than if the problems were reported to the Landlord earlier in the tenancy, I dismiss the Landlord's claim for compensation for repairing these fixtures.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that one set of blinds in this rental unit were damaged when someone broke into the rental unit. As section 32(3) of the *Act* only requires the Tenant to repair damage that is caused by the Tenant or a guest of the Tenant, I find that she is not obligated to repair the blinds that were damaged when someone broke into the unit.

On the basis of the testimony of the Tenant, I find that one set of blinds in this rental unit was damaged by the Tenant or a guest of the Tenant during the tenancy. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair this set of blinds.

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. I find that the Landlord failed to establish the true cost of repairing the damage to the blinds. In reaching this conclusion, I was heavily influenced by the absence of any documentary evidence, such as a receipt or formal estimate, which corroborates the Landlord's claim that it will cost \$35.97 to replace this set of blinds. I therefore award nominal damages for replacing the blinds, in the amount of \$20.00.

Section 37(2) of the *Act* requires tenants to leave a rental unit undamaged at the end of the tenancy, except for normal wear and tear. On the basis of the testimony of the Tenant and the photographs of the roller blind submitted in evidence, I find that the

damage to the roller blind is merely normal wear and tear. In my view, the damage depicted in the photograph is consistent with deterioration through normal use and is not consistent with the blinds being misused or neglected. As the Tenant is not obligated to repair damage that results from normal wear and tear, I find that the Tenant is not obligated to compensate the Landlord for repairing the roller blind.

I find that the Landlord submitted insufficient evidence to show that the plastic clips that hold the bathroom window screen in place were damaged through misuse or neglect. Given that these items are plastic, I find it entirely possible that they deteriorated over the course of the tenancy due to normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I find that the Tenant is not obligated to repair these plastic clips.

I find that the Landlord submitted insufficient evidence to show that the window locks were damaged through misuse or neglect. The photographs submitted in evidence by the Landlord show the locks are plastic. Given that these items are plastic and the windows are approximately 15 years old, I find it entirely possible that the locks broke due to normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I find that the Tenant is not obligated to repair these locks.

I find that the Landlord submitted insufficient evidence to show that the screen door latch was damaged through misuse or neglect. As there is no evidence that the screen is a new door and latches are known to break over time, I find it entirely possible that the latch broke due to normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I find that the Tenant is not obligated to repair the latch.

I find that the Landlord submitted insufficient evidence to show that there was glass in the screen door at the start of the tenancy. In reaching this conclusion, I was heavily influenced by the absence of any evidence, such as a condition inspection report, that corroborates the Landlord's testimony that there was glass in the door at the start of the tenancy or that refutes the Tenant's testimony that there was no glass in the door at the start of the tenancy. As the Landlord has not established that the glass was in place at the start of the tenancy, I cannot conclude that it was damaged during the tenancy. As the Landlord has failed to establish that the glass was damaged during the tenancy, I find that the Landlord is not entitled to compensation for replacing the window.

On the basis of the testimony of the Tenant, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove the wood from the back yard.

In addition to establishing that the Tenant failed to leave the rental unit in reasonably clean condition, the Landlord must also accurately establish the cost of removing the wood. As the Landlord has not yet paid to have the wood removed and has not obtained an estimate for removing the wood, I find that the Landlord has failed to establish the cost of remedying this breach. I therefore award nominal damages for removing the wood, in the amount of \$20.00.

Section 23(4) of the *Act* stipulates that the landlord must complete a condition inspection report at the start of the tenancy. The undisputed evidence is that the Landlord did not complete a condition inspection report at the start of the tenancy.

Section 24(2)(c) of the *Act* stipulates that the Landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not complete a condition inspection report at the start of the tenancy and provide a copy of it to the Tenant. As the Landlord did not complete a condition inspection report at the start of the tenancy, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage was 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 plus interest 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 24(2)(c) 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 in regards to the security deposit is to return the security 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(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

I find that the Landlord's claims have some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$1,119.46, which is comprised of double the security deposit plus \$19.46 in interest.

The Landlord has established a monetary claim, in the amount of \$90.00, which is comprised of \$40.00 in nominal damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting these two claims, I find that the Landlord must pay the Tenant \$1,029.46 and I grant the Tenant a monetary Order for that amount. 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: March 10, 2014

Residential Tenancy Branch

