



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 15, 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 and utilities; for a monetary Order for damage; to keep all or part of the security deposit/pet damage deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Application for Dispute Resolution was served to the Tenant, via registered mail, on August 15, 2013. The Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution.

On November 19, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of all or part of the security deposit/pet damage deposit and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution was served to the Landlord, via registered mail, on November 20, 2013. The Landlord acknowledged receipt of the Tenant's Application for Dispute Resolution.

On November 14, 2013 the Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that on November 13, 2013 he left copies of this evidence in the mail box at the Tenant's service address. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On November 22, 2013 the Tenant submitted documents to the Residential Tenancy Branch. The Tenant stated that on November 22, 2013 she mailed this evidence to the Landlord, via registered mail. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

On January 31, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that on January 13, 2014 he left copies of this evidence in the mail box at the Tenant's service address. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On February 08, 2014 the Tenant submitted documents to the Residential Tenancy Branch. The Tenant stated that sometime in February she mailed this evidence to the Landlord, via registered mail. The Landlord acknowledged receiving the Tenant's evidence on February 07, 2014 and it was accepted as evidence for these proceedings.

On February 12, 2014 the Landlord submitted documents to the Residential Tenancy Branch. The Landlord stated that on February 11, 2014 he left copies of this evidence in the mail box at the Tenant's service address. The Tenant stated that she does not reside at this service address and she had not yet received those documents.

The Landlord stated that his evidence was not submitted within the timelines established by the Residential Tenancy because he did not receive the evidence submitted by the Tenant until February 07, 2014. The Landlord requested an adjournment for the purposes of giving the Tenant time to receive the evidence he delivered to the service address on February 11, 2014. The Landlord was advised that the request for an adjournment was being denied; that the hearing would proceed; and that in the event it became necessary for me to view any of the evidence the Landlord submitted to the Residential Tenancy Branch on February 12, 2014, I would adjourn the hearing at that point.

As the hearing proceeded it became evident that the hearing could not be concluded in the time allotted for the hearing. The hearing was therefore adjourned on February 13, 2014. The hearing was reconvened on April 15, 2014 and was concluded on that date.

At the reconvened hearing the Tenant acknowledged receipt of the documents that were delivered to her service address on February 11, 2014. As the Tenant has now had ample time to consider that evidence, it was accepted as evidence for these proceedings.

During the hearing on February 13, 2014, it was difficult to understand precisely how the Landlord arrived at the amount of utilities due for each month. The Landlord was therefore directed to provide the Tenant and the Residential Tenancy Branch with an itemized list of his claims for unpaid utilities, which shows the amount of each unpaid bill; the portion of the bill the Tenant was required to pay; when the Tenant was provided with a demand note for payment; how much the Tenant paid for each bill; and the date of any payments.

The Landlord stated that he delivered a copy of the itemized list to the Tenant's service address on February 21, 2014. The Tenant acknowledged receiving the list and it was accepted as evidence for these proceedings.

The Landlord stated that on April 07, 2014 he delivered a DVD to the Tenant's service address. As this evidence was served after the start of the proceedings and the Landlord was not given direction or authorization to serve this evidence, the DVD was not accepted as evidence.

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

Preliminary Matter

The Tenant stated that she submitted an amended Application for Dispute Resolution in which she applied for compensation for a problem with wasps in the rental unit. She cannot recall when she submitted the amended Application for Dispute Resolution to the Residential Tenancy Branch nor can she recall when it was served to the Landlord.

The Landlord stated that he was not served with an amended Application for Dispute Resolution and I was unable to locate an amended Application for Dispute Resolution.

I find that the Tenant submitted insufficient evidence to show that she amended her Application for Dispute Resolution to include a claim for a monetary Order for money owed or compensation for damage or loss or that an amended Application was served to the Landlord. I therefore cannot conclude that the Application for Dispute Resolution was amended and I find that the Tenant's claims must be limited to the issues outlined in her original Application for Dispute Resolution.

Issue(s) to be Decided

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

Is the Tenant entitled to the return of the security deposit/pet damage deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 30, 2009; that rent was due in advance on the last day of each month; that the Tenant paid a security deposit of \$450.00; and that the Tenant paid a pet damage deposit of \$450.00.

The Landlord and the Tenant agree that the tenancy ended on July 31, 2013, at which time the Tenant provided the Landlord with a forwarding address, in writing.

The Landlord and the Tenant agree that in September of 2012 the rent was \$900.00 per month; that on October 31, 2012 the rent was increased to \$938.70; and that since the rent was increased the Tenant only paid monthly rent of \$938.00. The Landlord and the

Tenant agree that for the period between August 01, 2012 and the end of the tenancy the Tenant was obligated to pay rent of \$10,248.30.

The Landlord and the Tenant agree that the Tenant was obligated to pay 50% of the gas charges and 45% of the hydro charges for the residential complex. The Landlord and the Tenant agree that for the period between August 01, 2012 and the end of the tenancy the Tenant was obligated to pay utility charges of \$1,356.26 (\$1,375.26-\$19.00 refund for a furnace filter).

The Landlord and the Tenant agree that between August 27, 2012 and June 28, 2013 the Tenant paid a total of \$12,235.62 to the Landlord. The parties agree that \$1,100.00 of this was paid in accordance with a settlement agreement made at a previous dispute resolution proceeding, and that the remaining \$11,135.62 was payment for rent/utilities.

The Tenant stated that in addition to the payments outlined by the Landlord, she made a \$120.00 cash payment on May 13, 2013 and a \$50.00 cash payment in April or May of 2013. The Tenant stated that the Landlord signed a piece of paper to acknowledged receipt for the cash payment on May 13, 2013, although she cannot find that paper. She stated that she did not receive a receipt for the cash payment of \$50.00.

The Landlord stated that the Tenant did not make any cash payments and that he, therefore, did not provide her with receipts for those payments.

The Landlord is seeking compensation, in the amount of \$70.32, for repairing a bathroom window. The Landlord submitted a receipt for the window, in the amount of \$20.32. The Landlord stated that it took him two hours to replace the window and he is seeking \$50.00 in compensation for his time.

The Landlord and the Tenant agree that a condition inspection reported was completed on April 18, 2009, a copy of which was submitted in evidence. The Tenant acknowledged that she signed this report to indicate that it fairly represented the condition of the rental unit on that date.

The condition inspection report completed on April 18, 2009 indicates that the window in the main bathroom is in good condition. The Tenant stated that shortly after the tenancy began she noticed the window in the main bathroom was cracked. She stated that she did not notice this damage when the condition inspection report was completed because the curtains were drawn.

The Landlord and the Tenant agree that the window in the main bathroom was damaged at the end of the tenancy. The Landlord submitted a photograph of the window, in which a large, obvious crack is visible.

The Tenant submitted an email, dated October 29, 2013, from the former occupant of the upper suite. This occupant stated that the window was broken by the former occupant of this rental unit. The Landlord and the Tenant agree that the author of this

email was evicted by the Landlord. The Landlord contends that the information provided by the former occupant is false and may be motivated by animosity towards the Landlord.

The Landlord is seeking compensation, in the amount of \$66.77, for repairing the vertical blinds in the kitchen. The Landlord submitted a receipt for the replacement parts, in the amount of \$16.77. The Landlord stated that it took him two hours to find the replacement parts and to repair the blinds, for which he is seeking \$50.00 in compensation for his time. (The Landlord did not calculate the time for searching for parts in the detailed calculation, although his overall claim is still less than the amount of his original claim.) The Landlord submitted photographs of the damaged blinds.

The condition inspection report completed on April 18, 2009 indicates that the blinds in the kitchen were in good condition. The Tenant stated that shortly after the tenancy began she noticed that several blind panels were broken and held together by tape. The Tenant stated that the blinds were old and brittle. The Landlord stated that the blinds were purchased approximately one year prior to the start of the tenancy and that the rental unit had not been occupied after they were installed until the Tenant moved into the rental unit.

The Landlord is seeking compensation, in the amount of \$73.50, for cleaning the carpets. The Landlord submitted a receipt for cleaning in this amount. The Landlord stated that there were stains on the carpet in two bedrooms.

The Landlord submitted a photograph of the carpet in the rear bedroom, in which a stain is clearly visible. The Tenant stated that this stain occurred when she was cleaning up after a wasp infestation in the rental unit. She stated that when she was sweeping up the infestation the wasps were somehow pushed or ground into the carpet.

The Landlord stated that there was also a stain on the carpet in the master bedroom. The Landlord submitted a photograph of this carpet, although the stain is not clearly visible. The Tenant stated that she does not see a stain in the photograph and she does not recall a stain in the master bedroom.

The Landlord submitted a copy of the tenancy agreement and an addendum to the tenancy agreement. Article 35 of the addendum stipulates, in part, that the Tenant must have the carpets professionally cleaned at the end of the tenancy. The Tenant stated that she believes this term of the addendum was amended after the tenancy began, although she did not submit a copy of the amended addendum. The Landlord stated that the addendum was not amended.

The Tenant stated that she personally cleaned the carpet with a carpet cleaner she borrowed from a friend.

The Landlord is seeking compensation, in the amount of \$117.54, for restoring the yard to its original condition. The Landlord submitted a receipt for grass seed, in the amount

of \$42.54. The Landlord stated that it took him three hours to purchase the seed and repair the lawn, for which he is seeking \$75.00 in compensation for his time. The Landlord stated that the lawn in the area used by the Tenant was in good condition at the start of the tenancy. The Tenant stated that the lawn was full of crab grass and clover at the start of the tenancy. The condition inspection report that was completed on April 18, 2009 indicates the grounds were in good condition at the start of the tenancy.

The Landlord and the Tenant agree that during the tenancy the Tenant placed a large number of potted plants on the lawn in the area designated for her use. The Landlord submitted a photograph of this area that was taken in the summer of 2013.

The Landlord and the Tenant agree that the Tenant removed all of her potted plants from the yard at the end of the tenancy. The Landlord submitted a photograph of the yard, which was taken at the end of the tenancy, which shows that the lawn is in poor condition. The Tenant agrees that this photograph fairly represents the condition of her yard at the end of the tenancy.

The Tenant stated that some of the damage to the grass was caused by extremely hot weather experienced during the summer of 2013.

Analysis

On the basis of the undisputed evidence, I find that for the period between August 01, 2012 and the end of the tenancy the Tenant was obligated to pay \$11,604.56 in rent and utilities and that the Tenant only paid \$11,135.62 of this debt. I therefore find that the Tenant must pay the Landlord an additional \$468.94 for rent and utilities from this period.

I find that the Tenant has submitted insufficient evidence to show that the Tenant made additional cash payments of \$120.00 and \$50.00 and the aforementioned debt is, therefore, not being reduced by these amounts. When one party alleges a payment has been made, the burden of proving the payment was made rests with the party alleging the payment.

As the Tenant is unable to produce the piece of paper on which the Landlord allegedly acknowledged a cash payment of \$120.00, I find that there is no evidence to corroborate her testimony that this payment was made or to refute the Landlord's testimony it was not made. As the Tenant did not receive a receipt for the \$50.00 cash payment that was allegedly made, I find that there is no evidence to corroborate her testimony that this payment was made or to refute the Landlord's testimony it was not made.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report 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.

I note that the condition inspection report that was completed on April 18, 2009 indicates that the bathroom window was in good condition on that date.

I find that the Tenant has submitted insufficient evidence to convince me that the bathroom window was broken prior to the start of the tenancy. In my view, an email from a former occupant of the residential complex who was evicted from the complex does not constitute a "preponderance of evidence" to refute the information in the condition inspection report. Given that this occupant was evicted by the Landlord and may be motivated to retaliate against the Landlord, I cannot conclude that she is an unbiased party. I therefore do not place significant weight on her written declaration.

As the Tenant has failed to provide a preponderance of evidence to refute the contents of the condition inspection report that was completed on April 18, 2009, I find that I must rely on the information in the report that shows the bathroom window was in good condition on that date. As there is no dispute that the window was broken at the end of the tenancy, I find it reasonable to conclude that the Tenant or a guest of the Tenant damaged the window.

I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act* (Act) when she failed to repair the broken window at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the \$20.32 he paid for supplies to repair the window and for the two hours he spent repairing the window, at an hourly rate of \$25.00, for total compensation of \$70.32.

I note that the condition inspection report that was completed on April 18, 2009 indicates that the kitchen blinds were in good condition on that date. I find that the Tenant has submitted insufficient evidence to convince me that the blinds were broken at the start of the tenancy. In reaching this conclusion I note that the Tenant submitted no evidence to corroborate her claim that the blinds were damaged at the start of the tenancy and I can therefore not conclude that she submitted a "preponderance of evidence" to refute the information in the condition inspection report.

As the Tenant has failed to provide a preponderance of evidence to refute the contents of the condition inspection report that was completed on April 18, 2009, I find that I must rely on the information in the report that shows the blinds were in good condition on that date. As there is no dispute that the blinds were broken at the end of the tenancy, I find it reasonable to conclude that the Tenant or a guest of the Tenant damaged the blinds.

I find that the Tenant failed to comply with section 37(2) of the Act when she failed to repair the blinds at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the \$16.77 he paid for supplies to repair the blinds and for the two hours he spent repairing the blinds/locating supplies, at an hourly rate of \$25.00, for total compensation of \$66.77.

In reaching this conclusion I was influenced, to some degree, by the photograph of the damaged blinds that were submitted in evidence. In my view, these photographs show that the blinds were in reasonably good condition, with the exception of the tears, which does not support the Tenant's allegations that the blinds were "old and brittle".

On the basis of the photograph of the carpet in the rear bedroom, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the carpet in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the \$73.50 he paid to clean the carpet.

In determining that the Tenant is obligated to clean the carpet, I was heavily influenced by her testimony that wasps were "pushed or ground" into the carpet when she was sweeping them. Given that the wasps could have been vacuumed up without damaging the carpet, I find that the Tenant's decision to sweep the wasps was directly responsible for the stain on the carpet. In my view, a reasonable person would have anticipated the potential damage sweeping the wasps might cause or, at least, would have stopped sweeping once they recognized the carpet was being damaged.

In the absence of evidence to support the Tenant's testimony that article 35 of the addendum to the tenancy agreement was amended or to refute the Landlord's testimony that it was not amended, I find that the Tenant remains obligated to comply with article 35 of the addendum. I therefore find that the Tenant was obligated to have the carpet professionally cleaned at the end of the tenancy.

On the basis of the Tenant's testimony that she personally cleaned the carpet, I find that she did not comply with her obligation to have the carpets professionally cleaned. I therefore would have granted the Landlord's claim for cleaning the carpet even if there were no visible stains on the carpet. I find it reasonable for a landlord to require carpets to be professionally cleaned at the end of a long tenancy, as it is generally accepted that the equipment used by professional cleaners is more effective than rented or personal cleaners.

I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act (Act)* when she failed to restore the grounds to their original condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the \$42.54 he paid for grass seed and for the three hours he spent repairing the yard, at an hourly rate of \$25.00, for total compensation of \$117.54.

In reaching this conclusion I was heavily influenced by the photographs submitted in evidence. These photographs clearly show that the grass is in very poor condition, which is consistent with damage that would occur when potted plants are placed in an area for extended periods of time. As the Tenant placed the potted plants on the grass, I find that she was obligated to repair the damage caused by the pots.

In reaching this conclusion I have placed little weight on the Tenant's submission that the weather was unusually hot in the summer of 2013. In my view, the damage depicted by the photographs is primarily due to the presence of pots, although the weather may have contributed to the poor condition of the lawn where pots were not present.

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 an Application for Dispute Resolution, as her deposits would have been returned if the Landlord failed to establish that he was entitled to retain the deposits in the proceedings initiated by the Landlord. There was, therefore, no need for the Tenant to file an Application for Dispute Resolution and I dismiss her application to recover the filing fee.

Conclusion

The Landlord has established a monetary claim, in the amount of \$847.07, which is comprised of \$468.94 in unpaid rent/utilities, \$328.13 in 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 \$847.07 from the Tenant's security and pet damage deposits of \$900.00. I therefore find that the Landlord must return \$52.93 to the Tenant, which is the remaining portion of the deposits. Based on these determinations I grant the Tenant a monetary Order for the amount \$52.93. 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: April 16, 2014

Residential Tenancy Branch

