



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed March 13, 2014): MNDC, MND, MNSD, FF

Tenant's application (filed March 17, 2014): MNSD, MNDC

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant. On March 17, 2014, the Landlord amended his Application for Dispute Resolution to include an additional damage claim.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; and for compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with his Notice of Hearing documents including his amended Application for Dispute Resolution and copies of its documentary evidence by registered mail sent to the Tenant's new address on March 17, 2014. The Landlord sent a second package of documentary evidence to the Tenant by registered mail on June 19, 2014. The Landlord provided registered mail receipts and tracking numbers for both packages.

It was also determined that the Tenant served the Landlord with her Notice of Hearing documents by registered mail. The Tenant could not remember when the documents were mailed and did not have the tracking numbers; however, the Landlord acknowledged receiving the package sometime in April, 2014. The Tenant also served the Landlord with copies of her documentary evidence by registered mail on June 20, 2014.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for damage to the rental unit?
2. Is the Tenant entitled to a monetary award for double the amount of the security deposit and compensation from the Landlord for overpayment of utilities?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 25, 2012. The Tenant paid a security deposit in the amount of \$744.00 at the beginning of the tenancy.

The rental property is a house with two suites. The Tenant lived in the upper suite. The lower suite was rented to others. Utilities were in the Tenant's name; however, the Tenant was only responsible for paying 50% of the utilities. The parties agreed that the Tenant would send copies of the utility bills to the Landlord and the Landlord would reimburse the Tenant for the other occupant's share of the bills (the remaining 50%).

The Tenant provided the Landlord with her forwarding address in writing on March 1, 2014.

There was no Condition Inspection Report completed that complies with the requirements of the Act and regulations at the beginning or the end of the tenancy.

Both parties referred to a previous dispute resolution hearing (the "Previous Hearing"). It was held by conference call on January 22, 2014. Both parties were present at the Previous Hearing. It was convened to consider the Tenant's application for compensation for damage or loss under the Act and an Order that the Landlord comply with the Act and make repairs to the rental unit.

A decision was rendered on January 23, 2014. The arbitrator at the Previous Hearing recorded a settlement agreement with respect to bed bug treatment. The parties agreed that the rental property would be treated for bed bugs no later than January 29, 2014; and that the Tenant would be compensated for the cost she paid for an inspection in the amount of \$157.50, which could be deducted from future rent.

The arbitrator at the Previous Hearing also found that the Tenant was entitled to compensation for loss of peaceful enjoyment in the amount of \$100.00, which could also be deducted from future rent.

The Landlord gave the following testimony:

The Landlord testified that the Tenant moved into the rental unit in July, 2012. He stated that he did not complete a move-in condition inspection at the beginning of the tenancy because the rental unit had just been renovated and was in “new” condition. The Landlord stated that the City inspected the rental unit.

The Landlord stated that he inspected the rental unit on January 12, 2014, and as a result of that inspection he issued a One Month Notice to end the tenancy for cause on January 15, 2014. The Landlord testified that there was “lots of damage” to the rental unit, including broken doors and damage to the walls. The Landlord stated that the Tenant moved out of the rental unit in February, 2014.

The Landlord stated that the Tenant did not want to do an inspection at the end of the tenancy. He testified that the Tenant acknowledged that she had broken the bedroom door and that she promised to fix it and also to repair the walls. The Landlord stated that the Tenant did not fix the door. He said that she attempted to patch the walls, but did not do it properly or paint the walls.

The Landlord testified that the Tenant also left garbage at the rental unit.

The Landlord acknowledged that he owes the Tenant for the lower occupant’s share of utilities in the total amount of \$206.16.

The Landlord seeks a monetary award against the Tenant, calculated as follows:

| | |
|---|-----------------|
| Cost to replace damaged door and install new bedroom door | \$250.00 |
| Cost to replace damaged closet door and install new closet door | \$150.00 |
| Repair sliding glass door in master bedroom | \$60.00 |
| Replace damaged lock in back door | \$60.00 |
| Paint interior | \$1,650.00 |
| Clean ceiling fan | \$50.00 |
| Dump mattress and garbage | \$80.00 |
| Cost of repairing cracked window | \$507.00 |
| GST | \$141.00 |
| PST | <u>\$196.00</u> |
| SUBTOTAL | \$3,144.00 |

The Landlord provided a copy of two invoices dated March 9 and 25, 2014, and some photographs of the rental unit in evidence.

The Tenant gave the following testimony:

The Tenant testified that she moved into the rental unit on July 25, 2012. She stated that it was dirty when she moved in, but she told the Landlord that she would clean it.

The Tenant stated that her relationship with the Landlord went sour after she filed her dispute regarding bed bugs (which was the subject matter of the Previous Hearing). The Tenant testified that she decided not to dispute the Notice to End Tenancy and that she moved out at the end of February, 2014.

The Tenant testified that she provided the Landlord with her forwarding address on March 1, 2014, when they met at the rental unit for a "walk through". The Tenant stated that the Landlord did not have the Condition Inspection Report paperwork with him.

The Tenant agreed that she was responsible for the damage to the bedroom door. She stated that she did not damage the closet door, the lock to the back door, or the window. The Tenant stated that the back door was access to the laundry and she believes that the door knob may have been damaged when the Landlord replaced the old washing machine.

The Tenant stated that she put some nail holes in the walls and that her child had drawn with crayons and felt pen, but that she had patched the nail holes and primed the marks. The Tenant testified that she was going to pick up the mattress, but the Landlord got rid of it.

The Tenant submitted that the two invoices submitted by the Landlord were not bona fide invoices. She stated that there was no invoice reference number, the company name on the top of the invoice is not a company and that the invoice is not signed.

The Tenant also provided photographs of the rental unit in evidence.

The Tenant seeks a monetary award, calculated as follows:

| | |
|---|-------------------|
| Double the security deposit | \$1,488.00 |
| Double the amount of the utilities that the Tenant overpaid | <u>\$412.32</u> |
| TOTAL | \$1,900.32 |

The Landlord gave the following reply:

The Landlord stated that the Tenant's mattress was at the rental unit for a week after the Tenant moved out.

The Landlord stated that the invoices were bona fide invoices from a real company.

Analysis

Is the Landlord entitled to a monetary award for damage to the rental unit?

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has 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. 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 Landlord to prove 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 Tenants in violation of the Act or agreement,
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.

Condition Inspection Reports must be completed at the beginning and the end of a tenancy. The onus is on the Landlord to arrange for the Condition Inspections to take place. Section 21 of the regulation provides that a Condition Inspection Report, completed in accordance with Part 3 of the regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, **unless either party has a preponderance of evidence to the contrary.**

In this case, the Landlord relies on his testimony that the rental unit was freshly renovated at the beginning of the tenancy. He referred me to documentary evidence, which he submitted supports his testimony. However, I find that the Landlord's

documentary evidence is not sufficient to prove that the rental unit was undamaged at the beginning of the tenancy. The documentary evidence consists of a one page document entitled “**proposal to legalize the exiting basement and building development**”. There is a notation on the document, “subject to district building inspector’s on-site review”. The Landlord did not provide a copy of any such review. There is no reference on the one-page document that indicates the state of repair of the rental unit at the beginning of the tenancy.

The Landlord did not prepare a Condition Inspection Report at the end of the tenancy either. The Tenant stated that she did not damage the lock in the door to the common laundry room. She also denied damaging the closet door, the sliding glass door, and the window. I find that the Landlord did not provide sufficient evidence to support his claim that the Tenant was responsible for causing these damages and therefore, **this portion of his claim is dismissed without leave to reapply.**

During the course of the Hearing, the Tenant acknowledged that she was responsible for damaging the bedroom door. She also acknowledged that she left a mattress at the rental unit at the end of the tenancy. Tenants are required to give vacant possession (no personal possessions are to be left at the rental unit) at the end of a tenancy.

The Tenant questioned the validity of the invoices that the Landlord provided in evidence. Both invoices are unsigned, with no invoice number given on the document. The Landlord did not provide documentary evidence indicating that the invoices had been paid. However, I find that the amount claimed for removal and replacement of the damaged bedroom door and for disposal of the mattress is reasonable and allow the Landlord’s claim for this portion of his application in the total amount of **\$330.00**.

The photographs provided by both parties indicate that the Tenant patched the walls at the end of the tenancy. It is reasonable to expect that the Landlord would have to paint the walls before re-renting the rental unit. The Landlord requests a monetary award in the amount of \$1,650.00 for this portion of his claim. The rental unit consisted of three bedrooms, a hallway, bathroom, kitchen and living room. The photographs indicate that all of the rooms’ walls were patched. The Landlord did not provide a detailed breakdown of this portion of his claim (for example, the number of hours spent, the hourly rate for labour, the cost of materials). Residential Tenancy Policy Guideline 1 provides that the useful life for indoor paint is 4 years and I find that the paint was half way through its useful life and that the monetary award must be adjusted accordingly. For these reasons, and pursuant to the provisions of Section 67 of the Act, I award the Landlord the amount of **\$400.00** for this portion of his claim.

I find that the Landlord did not provide sufficient evidence to support his claim with respect to cleaning charges or repair of the back door lock. **This portion of his claim is dismissed without leave to reapply.**

The Landlord has been partially successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I find that the Landlord has established a monetary award in the total amount of **\$780.00**.

Is the Tenant entitled to a monetary award for double the amount of the security deposit and compensation from the Landlord for overpayment of utilities?

During the Hearing, the Landlord acknowledged that he owes the Tenant \$206.16 for utilities. The Tenant is claiming double the amount of the utilities owed. I find that there is no provision in the Act for doubling the amount of utilities owed and therefore, I allow this portion of the Tenant's claim in the amount of **\$206.16**.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, the Landlord applied against the security deposit within 15 days of receipt of the Tenant's forwarding address and therefore I find that the Tenant is not entitled to compensation under Section 38(6) of the Act. However, I find that she is entitled to return of the security deposit in the amount of **\$744.00**, because the Landlord extinguished his right to claim against the deposit for damages under the provisions of Section 24(2) of the Act.

I find that the Tenant has established a monetary award in the total amount of **\$950.16**.

Set off of Claims

I hereby set off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant with a Monetary Order in the amount of **\$170.00**.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$170.00** for service upon the Landlord. This Order may be filed in the Provincial Court 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: July 11, 2014

Residential Tenancy Branch

