



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties agreed that the 2nd respondent named by the landlord was not, in fact a tenant, but agent for the tenant. The application was amended to remove that respondent.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$642.89 for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced on May 1, 2013 and ended, with proper notice on May 31, 2014.

Condition inspection reports were completed in accordance with the Act. The tenant's sister completed the move-in condition inspection report with the landlord; acting as the tenant's agent.

Copies of the tenancy agreement and inspection reports were provided as evidence.

The landlord has made a claim for compensation for:

- \$442.89 replace window;
- \$100.00 supplies and paint; and
- \$100.00 labour.

The landlord stated that just prior to the end of the tenancy she was in the unit as the tenant had requested light bulbs. Only the tenant's friend was present in the unit at the time. The landlord noticed that one of several casement windows was propped open with a stick. The landlord said that she investigated and discovered that the plastic tabs that secure the window in the open or closed position were broken.

The window required these tabs; otherwise anyone could open the window from the outside. The windows had been purchased in 2006 from Home Depot. The landlord sent the tenant an email on May 13, 2014, to inform the tenant of the cost for repair. The landlord said that since the damage was not the result of normal wear and tear the tenant would need to replace the window. The landlord suspected the damage had been caused by allowing the window to slam shut. The landlord emailed the tenant, informing her that a window would be purchased the next day.

The tenant did not respond to the email. The tenant said that the window was like this from the start of the tenancy and that she viewed it as an inconvenience. The window screen was slightly bent and the tenant had assumed that at some point someone had attempted to enter the window from outside and, as a result, caused this damage.

The tenant does not believe the landlord fully investigated repair options for the window, but automatically had it replaced.

The landlord provided a copy of a May 12, 2014 quote for window replacement in the sum of \$442.89. The landlord did not supply receipts for the supplies and painting. The window replacement resulted in the need for a fresh coat of paint to all trim and the door. The landlord had to paint the trim and doors, as the matching paint had faded. The landlord has claimed compensation for her time taken to complete the repair.

The condition inspection report supplied as evidence showed that at the start of the tenancy the windows were satisfactory. A notation made at the end of the tenancy indicated that the patio door window clips were broken off. The tenant signed the move-out inspection report disputing the damage to the window.

The landlord said that the tenant was very particular and fastidious about the state of the rental unit and the fact that she did not point out the deficiency with the window shows that the tenant caused this damage. During the tenancy the tenant had called the landlord to replace a knob on a tap and to replace light bulbs and she believes that something as significant as a window that could not be locked would have resulted in the tenant contacting her.

At the start of the tenancy the landlord pointed out areas of damage that pre-existed in the unit. Agreement was also provided, allowing the tenant to replace some track lighting, recover stools and paint and refinish a desk. The tenant was to give quotes to the landlord.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

From the evidence before me I find, on the balance of probabilities that the window was not in the same condition at the start of the tenancy as it was at the end. From the testimony and evidence it appears that both the landlord and tenant were fastidious. The landlord completed all required documents and responded to all concerns elicited by the tenant; for items that were much less critical to the tenancy. I agree, on the balance of probabilities, that the tenant would not have tolerated a window that could allow access from the outside and that it more likely she did tolerate the broken window as it had been damaged during her tenancy.

Residential Tenancy Branch policy suggests that the useful lifespan of a window is fifteen years. Therefore, not having any evidence of the specific date of purchase before me, the windows purchased in 2006 would be 8 to 9 years old. Therefore, I find, on the balance of probabilities, that this then places a depreciated value on the window of 40% of the original value.

I have considered the tenant's testimony that the landlord did not fully explore repair options or obtain other quotes for replacement. However, the tenant was in a position to seek out this information and to supply it as evidence. If there was a more cost - efficient method of repair that could have been considered the tenant was entitled to provide that information to the landlord.

I have accepted the Home Depot quote as the cost of the window replacement and have adjusted the cost by 60%, to reflect the age of the window, to \$177.16. This is based on the estimate submitted by the landlord.

In the absence of receipts, verifying the cost of paint and supplies I find that the landlord is entitled to nominal compensation in the sum of \$20.00. I have accepted that the trim and door required paint as the result of fading and that painting was needed as a result of the window damage.

In the absence of any breakdown of the hours spent by the landlord to complete repairs I find that the landlord is entitled to nominal compensation in the sum of \$50.00.

As the claim has merit I find that the landlord is entitled to recover the \$50.00 filing fee.

Therefore, the landlord is entitled to compensation totalling \$347.16 which may be deducted from the security deposit. The balance of the claim is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance of the deposit should be ordered returned to the tenant; I find this to be a reasonable stance.

As the tenant paid a security deposit in the sum of \$625.00 I find that the tenant is entitled to return of the balance of the deposit, in the sum of \$277.84.

Based on these determinations I grant the tenant a monetary Order for the balance of the security deposit in the sum of \$277.84. 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 final and binding and 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: October 06, 2014

Residential Tenancy Branch

