



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN STRATA MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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

The Agent for the Landlord stated that on August 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the female Tenant, via registered mail. She stated that the documents were mailed to a forwarding address provided by the male Tenant, via text message, on April 09, 2014. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*; however she did not appear at the hearing.

The Agent for the Landlord stated that on August 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the male Tenant, via registered mail. She stated that the documents were mailed to a forwarding address provided by the male Tenant, via text message, on April 09, 2014. The Landlord submitted a Canada Post receipt that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served to the female Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*; however he did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on May 01, 2012 and that it ended on April 30, 2014. She stated that the Tenant paid a security deposit of \$625.00.

The Agent for the Landlord stated that the rental unit was new at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$15.00, for NSF fees. The Agent for the Landlord stated that the automatic debit payment for rent for August, September, and October did not clear the Tenant's financial institution. The Agent for the Landlord stated that the Landlord was charged \$5.00 for each NSF payment. The Landlord did not submit documentation from the bank to show that this fee was charged.

The Landlord is seeking compensation, in the amount of \$22.18, to copy keys for the rental unit. The Agent for the Landlord stated that five of the keys provided to the Tenant at the start of the tenancy were never returned. The Landlord submitted a receipt to show that it paid \$22.18 to copy keys to the rental unit.

The Landlord is seeking compensation, in the amount of \$25.00, to replace a parking pass. The Agent for the Landlord stated that the Tenant did not return the parking pass that was provided at the start of the tenancy. She stated that this pass is required for parking on the residential property. The Landlord submitted a receipt to show it costs \$25.00 to replace a parking pass.

The Landlord is seeking compensation, in the amount of \$94.49, for a missed service call. The Agent for the Landlord stated that the Tenant was directed to set up a service call for the furnace; that the Tenant set up an appointment for August 22, 2013; that the Tenant was not at the rental unit at the time of the scheduled appointment; and that the Landlord was charged \$94.49 for the missed appointment.

The Landlord is seeking compensation, in the amount of \$300, for a bylaw violation that occurred on April 09, 2013. The Landlord submitted a letter from the Strata Manager, dated May 01, 2013, which declares that a vehicle associated to the rental unit was seen driving on the landscaping of the residential complex, which damaged a shrub and is a contravention of a bylaw regarding nuisance. The letter indicates the Landlord is being charged \$100.00 to replace the shrub and is being fined \$200.00 for the bylaw infraction. The Landlord submitted a letter from the Agent to the Landlord to the Tenant, dated June 18, 2013, in which she informs the Tenant that the Tenant is responsible for the \$300.00 fee.

The Landlord is seeking compensation, in the amount of \$75.32, for paint used to repair "picture holes" on the walls and "dings" on the baseboards. The Landlord submitted several photographs of the areas requiring repairs.

The Landlord is seeking to recover the \$1,092.40 it paid to have the rental unit cleaned; to dispose of personal property left in the unit at the end of the tenancy; and to repair a hole in a bedroom door. The Landlord submitted several photographs of the rental unit that shows the rental unit required cleaning; that personal property was left in the rental unit; and that one door had a hole in it. The Landlord submitted a copy of the invoice for \$1,092.40.

The Landlord is seeking to compensation, in the amount of \$209.95, for cleaning the carpet in the rental unit. The Landlord submitted several photographs that show the carpet required cleaning. The Landlord submitted a copy of two bills that show this expense was incurred.

The Landlord is seeking \$160.00 in compensation for the damaged kitchen countertop. The Agent for the Landlord stated that the granite countertop was damaged during the tenancy, which she speculates was caused by a hot dish being left on the counter. The Landlord submitted a photograph of the damage. The Landlord submitted an estimate that indicates it will cost \$1,520.00 plus tax to replace the countertop, which cannot be repaired. The Agent for the Landlord stated that the Landlord does not intend to replace the countertop but would like some compensation for the reduced value of the countertop.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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 the *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 7(1)(c) of the *Residential Tenancy Regulation* allows a landlord to charge a fee for a service fee charged to the landlord by a financial institution for the return of a tenant's cheque. I find that this includes a fee for an automatic debit payment that has not been honoured by a financial institution.

In the absence of evidence to the contrary, I accept that the automatic debit payment for rent for August, September, and October did not clear the Tenant's financial institution. In addition to establishing that the payment did not clear, the Landlord must establish that the Landlord was charged a fee for the failed transaction. In these circumstances the Landlord submitted no documentation from either the Landlord's or the Tenant's financial institution to show that a fee was charged for the failed transaction. As this documentation should have been available with reasonable effort, I find that it should have been submitted. In the absence of such documentation, I find that the Landlord has failed to establish that a bank fee was charged. I therefore dismiss the claim of \$15.00 for bank fees.

Section 7(1)(a) of the *Residential Tenancy Regulation* allows a landlord to charge a fee for the direct cost of replacing keys or other access devices. On the basis of the undisputed evidence, I find that the Tenant did not return all of the keys to the rental unit at the end of the tenancy. The Landlord submitted a receipt to show it paid \$22.18 to replace these keys and I therefore find that the Landlord is entitled to these costs.

Section 37(2)(b) of the stipulates that at the end of a tenancy a tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. I find this includes a parking pass that allows a party to park on residential property.

On the basis of the undisputed evidence, I find that the Tenant did not return a parking pass that was provided to the Tenant at the start of the tenancy. The Landlord submitted a receipt to show it costs \$25.00 to replace the pass and I therefore find that the Landlord is entitled to recover this cost.

I am aware of nothing in the *Act* that requires a tenant to be present while repairs to the rental unit are being made or to be available to allow a tradesperson access to the rental unit. Although tenants frequently do provide access to tradespeople on behalf of a landlord as a matter of convenience for both parties, a tenant does not have a legal obligation to do so. While I accept the Landlord suffered a loss when the furnace technician could not access the rental unit on August 22, 2013, I cannot conclude that the loss was the result of the Tenant breaching the tenancy agreement or the *Act*. I therefore find the Tenant is not obligated to compensate the Landlord for that loss and I dismiss the claim for \$94.49.

On the basis of the undisputed evidence, I accept that a vehicle associated to the rental unit was driving on the landscaping of the residential complex, which damaged a shrub and is a contravention of a bylaw regarding nuisance. On the basis of the undisputed evidence, I find that the Landlord received a fine of \$200.00 for this infraction and that he was charged \$100.00 to repair the damaged shrub. I find that the Tenant is obligated to repair damage to the residential complex and to pay fines incurred as a result of bylaw infractions. I therefore grant the claim for \$300.00.

Section 37(2)(a) of the *Act* stipulates that at the end of a tenancy a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. On the basis of the photographs submitted in evidence, I find that the holes/dings on the baseboards and walls constitute reasonable wear and tear for a tenancy of this duration. I therefore dismiss the Landlord's claim for paint to repair these areas, in the amount of \$75.32.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition and to repair the bedroom door that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the \$1,092.40 it paid to clean the unit and repair the damaged door plus \$209.95 for cleaning the carpet.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the countertop that was damaged during the tenancy. Although the Landlord does not intend to replace the countertop I find that it is entitled to compensation for the reduced value of the countertop as a result of the damage. I find the claim of \$160.00 for general damages to be reasonable and I grant that claim.

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.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,859.53, which is comprised of \$1,809.53 in damage to the rental unit 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 the Tenant's security deposit of \$650.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of amount \$1,209.53. 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: March 24, 2015

Residential Tenancy Branch

