



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, 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 unpaid rent; 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 Landlord stated that on October 20, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to each Tenant. The Tenants acknowledged receipt of the documents/photographs and they were accepted as evidence for these proceedings.

On March 20, 2015 the male Tenant submitted documents and digital evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. He stated that these documents were served to the Landlord by mail on March 19, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 20, 2015 the female Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. She stated that these documents were served to the Landlord by mail on March 21, 2015 or March 22, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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

Preliminary Matter

With the consent of all parties, the Application for Dispute Resolution was amended to remove the name of the female Tenant. As such, any monetary Order that it issued will not name the female Tenant.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 27, 2013; that the female Tenant vacated the rental unit prior to the end of the tenancy; and that the male Tenant vacated the rental unit on August 24, 2014.

The Landlord and the Tenant agree that the tenancy agreement required the Tenant to pay monthly rent of \$1,700.00 by the first day of each month.

The Landlord stated that the Tenant paid security and pet deposits of \$1,400.00. The male Tenant stated that the Tenant paid security and pet deposits of \$1,300.00. The Landlord submitted a copy of a tenancy agreement that has been amended to show that a security deposit of \$900.00 was paid. The Tenant submitted a copy of a tenancy agreement that shows a security deposit of \$900.00 was paid.

The Landlord and the Tenant agree that a condition inspection report was not completed at the start of the end of this tenancy.

The male Tenant stated that he provided the Landlord with a mailing address on an Application for Dispute Resolution for a previous dispute, in which the Tenant was disputing a Notice to End Tenancy. The parties agree that a forwarding address was not provided, in writing, after the tenancy ended.

The Landlord withdrew all of his claims for compensation, with the exception of unpaid rent of \$3,400.00; \$2,000.00 in insurance deductible charges arising from damage to the rental unit; and \$1,400.00 to replace the carpet.

The Landlord is seeking compensation, in the amount of \$1,000.00, for repairing the kitchen floor that was damaged by water. He stated that the damage has been repaired by his insurance company and he is seeking to recover the \$1,000.00 insurance deductible that he paid.

The Landlord submitted photographs of the damaged floor. The Agent for the Landlord stated that she observed the damage when the rental unit was inspected after it had been vacated. She stated that she observed a towel at the base of the dishwasher and she acknowledged that the damage to the floor may have been caused by water leaking from the dishwasher.

The Tenant stated that he never noticed the floor was damaged. He stated that when he moved into the rental unit the Landlord's wife told him that the dishwasher

sometimes leaked. He stated that the dishwasher periodically leaked and that he dried the floor whenever it leaked.

The Landlord stated that he was not previously aware that the dishwasher leaked, although he is now replacing the dishwasher because of the issue with leaking. He stated he does not know if his wife told the Tenant the dishwasher leaked.

The Landlord is seeking compensation, in the amount of \$1,000.00, for repairing the bathtub and a ceiling that was damaged by water. He stated that the damage has been repaired by his insurance company and he is seeking to recover the \$1,000.00 insurance deductible that he paid.

The Landlord submitted photographs of the damaged ceiling and a hole in the bathtub. The Landlord stated that water leaked through the hole in the bathtub and damaged the ceiling below the tub. The Landlord stated that a tradesperson told him that the damage was likely caused by something being dropped on the bathtub, although no evidence was submitted to support this testimony.

The male Tenant stated that he never noticed the hole in the bathtub and he never noticed the damage to the ceiling below the tub, as he never used that part of the rental unit. He speculates that after his tenancy someone pressed on the hole to increase the size of it to the point it is now clearly visible. The male Tenant stated that the bathtub was old and chipped in various locations at the start of the tenancy.

The Agent for the Landlord stated that she was present when the hole in the bathtub was discovered by people cleaning the rental unit a few days after the tenancy ended and that the cleaners did not break the tub.

The Landlord and the Tenant agree that the Landlord sent the male Tenant a text message on August 26, 2014, a copy of which was submitted in evidence. In this message the Landlord wrote: "they tell me you've left the place in good shape, all things considered". The Landlord stated that he had not viewed the rental unit prior to sending this text message and that it was sent before the Agent for the Landlord fully informed him of the nature of the damage to the rental unit.

The Landlord is seeking compensation, in the amount of \$1,400.00, for replacing carpet in two bedrooms.

The Landlord and the Agent for the Landlord stated that the carpet was badly stained at the end of the tenancy and was in far worse condition at the end of the tenancy than it was at the start of the tenancy. The Landlord submitted no photographs of the damage to the carpet.

The male Tenant stated that the carpets were badly stained at the start of the tenancy. He stated that the carpets were in similar condition at the end of the tenancy.

The Tenant submitted digital images of the carpet, which he stated were taken on February 14, 2013.

The Tenant argues that all of the claims made by the Landlord are simply an attempt to renovate an older home at the Tenant's expense.

The Landlord and the Tenant agree that the cheque tendered for rent for July and August of 2014 was not honored by the Tenant's financial institution.

The Landlord and the Tenant agree that on August 07, 2014 the Tenant paid \$1,700.00 in cash. The Tenant stated that this was a rent payment for July of 2014 and that he never authorized the Landlord to apply the payment to money owed for utilities.

The Landlord initially stated that he understood this was a rent payment for August of 2014. He then stated that he cannot recall what the payment was for. He stated that he opted to apply it to money he believed was due for utilities.

The parties agree that no further payments were made after August 07, 2014.

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 *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 of the *Act* requires a tenant to repair damage to a rental unit that is caused by the actions or neglect of the tenant. I find that the Landlord has failed to establish that the kitchen floor was damaged by the neglect or actions of the Tenant.

In reaching this conclusion I was heavily influenced by the undisputed testimony of the male Tenant, who stated that when the tenancy began the Landlord's wife told him the dishwasher leaked. He stated that he wiped up the water when the dishwasher leaked.

On the basis of the photographs of the damaged floor, the Agent for the Landlord's testimony that she observed a towel in front of the dishwasher, and the testimony of the Tenant, I find it reasonable to conclude that the damage to the floor was directly related to the leaking dishwasher.

As the Landlord could have mitigated the damage to the floor by repairing or replacing the leaking dishwasher, I find that the Tenant is not obligated to repair the damage to the floor. In reaching this conclusion I was influenced by the evidence that shows the Tenant made reasonable efforts to dry the floors. As the Tenant is not obligated to

repair the floors, I dismiss the Landlord's claim for the \$1,000.00 insurance deductible that was paid.

On the basis of the undisputed evidence, I find that a ceiling in the rental unit was damaged as a result of water leaking from a hole in the bathtub. Even if I were to accept the Tenant's testimony that he did not notice the hole in the bathtub, I would find that a reasonable and responsible person should have noticed this hole. This conclusion is based on the photographs submitted in evidence, which clearly show the damage to the bathtub.

Even if I were to accept that the bathtub was further damaged by someone poking at the hole, on the basis of the clearly visible rust stains I find it reasonable to conclude that at least some of the damage was visible prior to the end of the tenancy. I find that the Tenant's failure to report the damage to the Landlord is a breach of section 32(3) of the *Act*. Had the damage to the bathtub been reported in a timely manner, the Landlord could have repaired the damage and prevented the water from leaking into the lower ceiling. I therefore find that the Tenant must compensate the Landlord for the \$1,000.00 insurance deductible that was paid to repair the ceiling.

I find that the Landlord has submitted insufficient evidence to show that the carpets were stained during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report that establishes the condition of the carpets at the start of the tenancy, which could corroborate the Landlord's claim that the carpets were damaged during the tenancy or that refutes the Tenant's claims that they were not damaged during the tenancy.

As the Landlord has failed to establish that the condition of the carpets deteriorated during the tenancy, I dismiss the Landlord's claim to replace the carpet.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due for July, however he did pay \$1,700.00 in cash on August 07, 2014. On the basis of the Tenant's testimony that this cash was tendered for rent for July, I find that this payment should have been applied to rent for July. In the absence of evidence that establishes the Tenant intended the payment to be applied to any other debt, I find that the payment must be applied to the intended debt. I therefore find that rent for July of 2014 has been paid in full.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for August, although he occupied the rental unit for the majority of the month. As the Tenant occupied the rental unit for most of August of 2014, I find that he must pay the Landlord rent for that month, in the amount of \$1,700.00.

In reaching this conclusion I have placed little weight on the text message sent by the Landlord on August 26, 2014. Clearly the rental unit was not left in good condition and the text message was based on a misunderstanding or miscommunication.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,800.00, which is comprised of \$1,700.00 in unpaid rent, a \$1,000.00 insurance deductible payment, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the \$1,400.00 security deposit he contends he is holding, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,400.00. 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: April 02, 2015

Residential Tenancy Branch

