



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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 female Landlord stated that on October 27, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted a Canada Post receipt that corroborates this statement. The female Landlord stated that the Tenant provided the service address to her, via email, although she does not recall the date. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

On March 17, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The female Landlord stated that these documents were served to the Tenant by registered mail on March 17, 2015. 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 in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

On March 23, 2015 the Tenant submitted numerous documents to the Residential Tenancy Branch, which I presume the Tenant wishes to rely upon as evidence. The female Landlord stated that these documents were received on March 24, 2014. As the documents were received by the Landlord, I find it reasonable to consider these documents when rendering a decision in this matter.

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

In the Application for Dispute Resolution the Landlord declared that she was seeking compensation of \$3,525.10. The Landlord submitted a Monetary Order Worksheet, in which she declared that she is only seeking compensation of \$1,765.95 from the Tenant. At the hearing the female Landlord confirmed that she is only seeking compensation of \$1,765.95.

The female Landlord stated that this tenancy began on June 01, 2013 and ended on August 31, 2014. She stated that the Tenant and a co-tenant were named on the tenancy agreement.

The female Landlord stated that monthly rent was \$1,050.00; that a pet damage deposit of \$525.00 was paid; and that a security deposit of \$525.00.

In the text messages submitted in evidence by the Tenant, the Tenant provided a forwarding address on October 17, 2014.

The female Landlord stated that a condition inspection report was completed on June 01, 2013. She stated that she met with the Tenant on August 31, 2014 for the purposes of completing a final condition inspection report but the report was only partially completed because the parties could not agree on the content of the report. She stated that she did not sign the report because the Tenant refused to sign it.

In the Tenant's written submission, the Tenant declared that a final condition inspection report was not "completed in writing and/or given to me within the appropriate time after moving out". He declares that there was not an "official move out inspection", although they did meet "in person" and do a "brief walkthrough".

The Landlord is seeking compensation, in the amount of \$1,283.93, for replacing the carpet. The female Landlord stated that the carpets were badly soiled by pet feces and urine and could not be cleaned. The Landlord submitted two letters from witnesses who declared there was dog feces and urine in the rental unit at the end of the tenancy. One of the letters was written by the female Landlord's mother and one was written by her father-in-law.

The Landlord submitted receipts to show that she paid \$2,567.85 to replace the carpets, which included the cost of installation, the cost of purchasing the carpet, and the cost of disposing of the old carpet. The female Landlord stated that the carpets were approximately seven years old.

I was unable to locate anything in the Tenant's written submission that would cause me to conclude that the Tenant is denying the claim that the carpets were damaged.

The Landlord is seeking compensation, in the amount of \$250.00, for replacing the refrigerator. The female Landlord stated that the Tenant used the refrigerator from another rental unit, without the consent of the Landlord. She stated that the Tenant was given permission to use the refrigerator after the Tenant had taken possession of the appliance. She stated that the refrigerator was removed from the other rental unit because those occupants had their own refrigerator.

The female Landlord stated that the refrigerator was left on a covered porch and at some point was unplugged by the Tenant. She stated that the manner in which the appliance was stored caused the appliance to rust and become mouldy, which damaged it beyond repair.

The female Landlord stated that the refrigerator was replaced with a used refrigerator. The Landlord submitted a receipt to show that she paid \$500.00 to purchase a used refrigerator.

In his written submission the Tenant argued that he should not be responsible for replacing the refrigerator because the Landlord neglected to remove it from the property after being informed it was not being used by the Tenant.

The Tenant submitted a text message from the Landlord, dated December 07, 2013, in which the Landlord informs the Tenant that the Landlord will be picking up the refrigerator "sometime this week". The Tenant submitted a text message in response to this text message, in which the Tenant informs the Landlord that the fridge has been "empty and unplugged since we had it here".

The Tenant submitted a text message from the Landlord, dated May 02, in which the Landlord informs the Tenant the refrigerator needs to be moved back into the house by the next day.

The Landlord is seeking compensation, in the amount of \$90.00, for cleaning the rental unit. The female Landlord stated that the rental unit was filthy at the end of the tenancy. The Landlord submitted two letters from witnesses who declared there was dog feces and urine in the rental unit at the end of the tenancy. One of the letters was written by the female Landlord's mother, who declared that the walls, bathroom, and kitchen also needed cleaning. The Landlord submitted a receipt to show that she paid \$180.00 to clean the unit.

In the Tenant's written submission the Tenant disputed the \$180.00 claim for cleaning. He declared that the rental unit was left "cleaner when I had moved out than the condition it was in when I had moved in". He declared that the walls, window sills, and appliances were cleaned prior to the final inspection.

The Landlord is seeking compensation, in the amount of \$6.13, to dispose of garbage left in the rental unit. The Landlord submitted a receipt to show that she paid \$12.25 in dump fees.

The Landlord is seeking compensation, in the amount of \$60.00, to replace blinds in the rental unit. The female Landlord stated that the blinds were damaged during the tenancy and needed to be replaced. The Landlord submitted a receipt to show that she paid \$253.05 to replace the blinds. She stated that she replaced all of the blinds in the room as she could not find blinds that matched the other blinds; however she is only seeking compensation for the one set of blinds that were damaged. She estimates that the blinds were approximately four years old.

In his written submission the Tenant disputed the claim for replacing the blinds. He declared that he left a set of curtains in the rental unit to replace the blinds that were broken.

The Landlord is seeking compensation, in the amount of \$25.00, to reseed the lawn. The female Landlord stated that the lawn was damaged by the Tenant's dogs. The Landlord stated that she spent approximately 1 hour re-seeding the lawn and that she will need to spend another 2 hours to fully repair the lawn.

In his written submission the Tenant disputed the claim for repairing the lawn. He declared that he left grass seed in the rental unit to re-seed the area damaged by the dogs.

The Landlord is seeking compensation, in the amount of \$50.00, for repairing the rear door. The female Landlord stated that the door was damaged by the Tenant's dogs. The Landlord submitted a receipt to show that she paid \$100.00 to repair the door.

In his written submission the Tenant disputed the claim for repairing the door. He declared that door could have been repaired with a piece of painted wood.

Analysis

When making a claim for damages under a tenancy agreement or the *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.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpet undamaged and reasonably clean at the end of the tenancy. In the absence of evidence to the contrary, I accept that the carpets were so dirty that they needed to be replaced.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpets were approximately seven years old. I therefore find that the carpets had depreciated by 70% and that the Landlord is entitled to 30% percent of the \$2,597.85 to replace the carpet, which is \$770.36.

On the basis of the undisputed evidence, I find that the Tenant had possession of a refrigerator belonging to the Landlord and that the refrigerator was damaged because it was unplugged and left outside. On the basis of the undisputed evidence, I find that this refrigerator was not provided to the Tenant with the rental unit but, rather, was in the Tenant's possession simply because an occupant of another rental unit did not need the appliance.

I find that the Landlord has submitted insufficient evidence to show that the Tenant was solely responsible for the damage to the refrigerator. On the basis of the text messages submitted in evidence, I find that on December 07, 2013 the Landlord was informed that the refrigerator was not being used by the Tenant and that the Landlord had not moved the refrigerator by May 02, 2014.

Section (7)(2) of the *Act* requires a landlord who claims compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. I find the Landlord failed to mitigate the damage to the refrigerator when they left it in the care of the Tenant for almost six months after being informed that the refrigerator was not being used. I find that if the appliance had been moved in a timelier manner it is highly likely that the refrigerator would not have been damaged to the point of needing to be replaced. As the Landlord did not mitigate the damage to the refrigerator, I dismiss the Landlord's claim for replacing the refrigerator.

I favour the evidence of the Landlord over the evidence of the Tenant in regards to the need to clean the rental unit. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy. As the Landlord has established that \$180.00 was paid to clean the rental unit, I find that the Landlord is entitled to her claim of \$90.00 for cleaning costs and \$6.13 in disposal charges.

I favoured the evidence of the Landlord in regards to cleaning, in part, because the Landlord submitted a letter from a third party who also concluded that the rental unit required cleaning. Although this letter is from a relative, who may be inherently biased, it still serves to corroborate the claim.

More importantly, I favour the evidence of the Landlord in regards to cleaning because the Tenant did not dispute the allegation that animal feces was left on the carpet in the rental unit. I find it highly unlikely that someone would adequately clean all areas of a rental unit yet neglect to remove feces from the floor.

I favoured the evidence of the Landlord in regards to cleaning, in part, because the Landlord submitted a receipt for disposing of garbage left in the rental unit. The fact that the Landlord incurred this expense serves to corroborate the claim that property was left in the rental unit.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the blinds that were damaged during the tenancy.

A tenant has an obligation to leave the rental unit in undamaged condition. In the event a tenant damages a set of blinds, the tenant has an obligation to replace or repair the blinds. A tenant does not, in my view, have the right to simply replace the damaged blinds with a window covering of his/her choice, unless the landlord implicitly agrees that the substitution is acceptable.

I therefore find that the Landlord, in these circumstances, is entitled to the cost of replacing the blinds. I find that the Landlord is entitled to compensation for the cost of replacing all of the blinds in the room to ensure they were a consistent style/colour, as the blinds in the room were consistent at the start of the tenancy.

The Residential Tenancy Policy Guidelines show that the life expectancy of blinds is ten years. The evidence shows that the blinds were approximately four years old. I therefore find that the carpets had depreciated by 40% and that the Landlord is entitled to 60% percent of the \$253.45 to replace the blinds, which is \$152.07. As the Landlord has only claimed \$60.00 for replacing the blinds, I find she is entitled to the full amount of her claim.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the lawn that was damaged during the tenancy. As the Landlord has established that she has spent, or will spend, approximately three hours repairing the lawn, I find that the Landlord is entitled to her claim of \$25.00.

In determining this matter I have placed no weight on the Tenant's submission that he left grass seed for the Landlord, is the award for repairing the lawn is based entirely on the time the Landlord spent, or will spend, repairing the lawn.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the door that was damaged during the tenancy. As the Landlord has established that \$100.00 was paid to repair the door, I find that the Landlord is entitled to her claim of \$50.00.

In determining this matter I have placed no weight on the Tenant's submission that the door could have been repaired with a 1X6 piece of wood that was painted blue. Even if I were to conclude that this was a suitable repair, I have no evidence to show that it would not have cost at least \$50.00 to hire someone to complete this repair.

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, in the amount of \$50.00.

Section 35(1) of the *Act* stipulates that a landlord and tenant must jointly inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day. On the basis of the undisputed evidence, I find that the Landlord and the Tenant jointly inspected the rental unit on August 31, 2014.

Section 35(3) of the *Act* stipulates that a landlord must complete a condition inspection report. On the basis of the Landlord's evidence that a condition inspection report was partially completed on August 31, 2014 I find that the Landlord complied with section 35(3) of the *Act*.

I find the Landlord's testimony regarding the final condition inspection report being partially completed is more reliable than the Tenant's written submission that the final condition inspection report was not "completed in writing" or that there was not an "official move out inspection", as the Tenant did not attend the hearing to dispute the testimony that one was partially completed. I find it entirely possible that the Tenant concluded a report was not fully completed simply because it was not signed by the parties.

Section 35(4) of the *Act* stipulates that both the landlord and the tenant must sign the condition inspection report. Both parties are required to sign the report even if the tenant does not agree with the content of the report. On the basis of the evidence before me, I find that neither party signed the final condition inspection report. I therefore find that they both failed to comply with section 35(4) of the *Act*.

Section 35(4) of the *Act* stipulates that a landlord must provide the tenant with a copy of the final condition inspection report in accordance with the regulations. Section 18(1)(b) of the Residential Tenancy Regulation requires a landlord to provide the tenant with a copy of the final condition inspection report within fifteen days after the later of the date the report was completed or the date the landlord receives the tenant's forwarding address in writing. As there is no evidence the Landlord provided the Tenant with a copy of the condition inspection report that was at least partially completed at the end of the tenancy, I find that the Landlord failed to comply with section 35(4) of the *Act*.

Section 36(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not give the tenant a copy of the inspection report, as is required by section 35(4) of the *Act*. As

I have concluded that the Landlord failed to comply with section 35(4) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant, which is \$2,100.00.

Conclusion

I find that the Landlord has established a monetary claim of \$1,051.49, which is comprised of \$1,001.49 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I find that the Tenant is entitled to recover double the security/pet damage deposit, which is \$2,100.00.

After offsetting these two amounts, I find that the Landlord owes the Tenant \$1,048.51, and I grant a monetary Order for this amount. 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 09, 2015

Residential Tenancy Branch