Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

It is readily apparent from information on the Application for Dispute Resolution that the Landlord is seeking compensation in the amount of $596.00, and that matter will be determined at these proceedings.

The Landlord stated that on September 17, 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 and the Tenant agree that this service address was provided to the Landlord, in writing, when they met to inspect the rental unit on September 01, 2014. The Tenant acknowledged receipt of these documents.

On March 30, 2015 the Landlord submitted documents and digital evidence to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that there was a delay in submitting this evidence because he lost his job.

The Landlord stated that the aforementioned evidence was sent to the Tenant, via registered mail, on March 31, 2015. The Landlord stated that there was a delay in serving these documents to the Tenant because the Tenant had advised him, by text message, to refrain from contacting him.

The Tenant stated that the service address he provided is a parent's address; he has been informed that he has mail at that service address; and he has not yet had the opportunity to pick up those documents.

The Landlord requested an adjournment for the purposes of providing the Tenant with time to retrieve the evidence that was submitted. The Tenant argued that the evidence should have been served in a timelier manner and should not be considered.

The parties were advised that the hearing would proceed without the benefit of the physical evidence and that I would determine whether an adjournment would be considered after the hearing was concluded. The parties were advised that if an adjournment was granted they would receive a Notice of Reconvened Hearing in the mail and we would consider the Landlord's physical evidence at that time and that if I did not grant an adjournment my decision would be based on the testimony provided at the hearing.

Upon reflection, I find that the evidence submitted to the Residential Tenancy Branch by the Landlord on March 30, 2015 and mailed to the Tenant on March 31, 2015 should not be accepted. I therefore will not be considering that evidence when determining this matter. In determining that the evidence should not be accepted I was guided by Rule 2.5 and Rule 3.12 of the Residential Tenancy Branch Rules of Procedure.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure stipulates that to the extent possible, an applicant must submit a detailed calculation of a monetary claim being made and copies of all other documentary and digital evidence to be relied on at the hearing when the Application for Dispute Resolution is submitted. The only exception to this rule is when an application is subject to a time constraint, such as an application under sections 38, 54 or 56 of the *Residential Tenancy Act* or sections 47 or 49 of the *Manufactured Home Park Tenancy Act.*

This Application for Dispute Resolution was filed by the Landlord on September 11, 2014. In the details of dispute the Landlord declared that he has corroborating text messages and pictures, "which can be submitted". Clearly that evidence was available at the time the Application for Dispute Resolution was submitted and could have been submitted in accordance with Rule 2.5.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch not less than fourteen days before the hearing. The Landlord submitted documentary and digital evidence to the Residential Tenancy Branch fifteen days prior to the hearing; however that evidence was not even mailed to the Tenant on March 31, 2015 and has not yet been received by the Tenant. I find that the evidence submitted on March 30, 2015 does not comply with Rule 3.14, as it was not received by the Tenant within 14 days of the hearing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure stipulates that I may refuse to consider evidence if there has been an unreasonable delay in serving the evidence. As the Landlord did not serve the evidence when it was available in September of 2014; the Landlord did not take reasonable steps to ensure the evidence was received at the service address at least 14 days prior to the hearing; and the Tenant has not yet received the evidence, I find there was an unreasonable delay in serving the evidence.

In determining that the evidence should not be accepted, I find that the Landlord has failed to establish that there were exceptional circumstances that prevented him from serving and filing the evidence in accordance with the Rules of Procedure. I do not find that losing a job sufficiently explains why evidence cannot be submitted in a timely manner.

Even if I accepted the Landlord's testimony that the Tenant asked him, via text message, to sever contact, that message does not negate the Landlord's right to serve evidence to the Tenant and his obligation to serve it in a timely manner.

In determining that the evidence should not be accepted, I was influenced, to some degree, by the fact the Tenant was in attendance at the hearing and was prepared to proceed with the matter. I find that adjourning the matter to provide the Tenant with time to collect and review the Landlord's evidence would be unfair to the Tenant, as he would have to commit additional time to the process.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. I specifically note that the Landlord had the opportunity to discuss his documentary/digital evidence at the proceedings.

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 Landlord and the Tenant agree that the Tenant lived in this rental unit prior to entering into this tenancy agreement, however he moved out several months prior to entering into this tenancy agreement. The parties agree that:

- this tenancy began on April 01, 2013;
- the Tenant agreed to pay rent of $750.00 by the first day of each month;
- the Tenant paid a security deposit of $375.00;
- the rental unit was inspected at the start of the tenancy but the Landlord did not complete a condition inspection report;
- the tenancy ended on September 30, 2014; and

- the parties met at the end of the tenancy for the purposes of inspecting the unit but the Tenant did not wish to complete a condition inspection report, since one was not completed at the start of the tenancy.

The Landlord is seeking compensation, in the amount of $402.00, for cleaning the rental unit. The Landlord stated that the rental unit required significant cleaning at the end of the tenancy, which he contends is demonstrated by the digital images that were not accepted as evidence. He stated that he paid $400.00 to clean the rental unit, which he contends is corroborated by the receipt that was submitted with the documents that were not accepted as evidence.

The Tenant stated that the rental unit was left in reasonably clean condition.

The Landlord is seeking compensation, in the amount of $126.00, for disposing of a large amount of garbage, including a couch, which the Tenant left at the curbside. The Landlord stated that, given the amount of garbage, he knew that the items would not be removed by the garbage removal service. He contends the amount of garbage is depicted in the digital images that were not accepted as evidence. He stated that he paid $40.00 to borrow a friend's truck and that he took the items to the dump by himself, which took approximately two hours. He stated that he paid dump fees of $13.48 to dispose of the items. He stated that he did not submit any receipts for these claims.

The Tenant acknowledged that he left several bags of garbage and a couch at the curb at the end of the tenancy. He stated that he subsequently learned that the items would not be removed by the garbage removal service so he returned approximately five days later to remove the garbage but it was already gone.

The Landlord is seeking compensation, in the amount of $50.00, for repairing 6 holes in the wall that the Tenant made for the purposes of erecting a shelf and for repairing approximately 48 holes in the wall the Tenant made for the purposes of hanging art. He stated that it took him approximately two hours to complete the repairs.

The Tenant stated that he did erect a shelf, with the permission of the Landlord. He stated that he only made approximately 12 holes in the wall for hanging art.

The Landlord stated that he did give the Tenant permission to erect a shelf, with the proviso that the shelf would be removed and any resulting holes would be repaired.

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.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant did not leave the rental unit in reasonably clean condition. When a landlord says the rental unit requires cleaning and a tenant says it was left in reasonably clean condition, the onus is on the landlord to establish that cleaning was required. This is typically shown with a condition inspection report completed at the end of the tenancy or photographs. As no photographs were accepted as evidence for these proceedings, I find that the Landlord has failed to establish a claim for cleaning. I therefore dismiss the claim for compensation for cleaning.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when he left a large amount of garbage at the curb, including a couch, which typically would not be removed by curbside garbage services. In addition to establishing that a tenant breached the *Act,* a landlord must also accurately establish the cost of remedying the breach. As the Landlord submitted no evidence to corroborate his claim that he paid $40.00 to borrow a truck or that he paid $13.48 in dump fees, I find that he has failed to establish the true cost of remedying the breach. I therefore dismiss those aspects of the Landlord's claim for removing the garbage, however I do award him $50.00 for the time he spent disposing of the property.

On the basis of the undisputed evidence, I find that the Tenant made at least 12 holes in the wall for the purposes of hanging art. I find no evidence was accepted that corroborates the Landlord's claim that more than 12 holes were made and I therefore find that the Landlord has failed to establish that the Tenant made an unusual amount of holes in the wall for the purposes of hanging art.

On the basis of the undisputed evidence, I find that the Tenant made several screw holes in the wall for the purposes of hanging a shelf. Residential Policy Guideline #1 stipulates that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. I find the Tenant submitted no evidence to corroborate his testimony that he had permission to leave the shelf on the wall at the end of the tenancy or to refute the Landlord's testimony that the Tenant was told that he must repair any holes made as the result of a shelf being erected. In the absence of explicit consent, I find that the Tenant should have repaired the holes at the end of the tenancy.

Section 37 of the *Act* requires tenants to repair damage to a rental unit, except for damage that is considered normal wear and tear. It is commonly understood that most tenants will hang art during a tenancy and I therefore find the twelve holes in the wall from hanging art constitutes normal wear and tear. Residential Policy Guideline #1 stipulates that a tenant must pay for repairing walls where there are an excessive number of nail holes or there are large nail or screw holes.

As the Landlord has failed to establish that there were an excessive number of holes in the wall as a result of the Tenant hanging art, I dismiss the Landlord's claim for repairing those types of holes. I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to repair the screw holes he made in the wall when he erected a shelf. I therefore find that the Landlord is entitled to compensation for repairing these holes.

As I have determined that the Landlord is entitled to compensation for some of the repairs made to the wall, I find that he is entitled to compensation for one of the two hours he spent repairing the walls, in the amount of $25.00.

Section 23(4) of the *Act* stipulates that a landlord must complete a condition inspection report at the start of the tenancy. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 23(4) of the *Act.*

Section 24(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit for damage is extinguished if the landlord does not complete a condition inspection report at the start of the tenancy*.* As I have concluded that the Landlord failed to complete a condition inspection report at the start of the tenancy, I find that the Landlord's right to claim against the security deposit is extinguished.

Section 38(1) of the *Act* stipulates that within fifteen 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 where a landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2) of the *Act,* a landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage to the unit 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 section 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(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

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

Conclusion

The Landlord has established a monetary claim, in the amount of $125.00, which is comprised of $75.00 for damage and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Tenant has established a monetary claim, in the amount of $750.00, which is double the security deposit.

After offsetting the two claims, I find that the Landlord must pay the Tenant $625.00. Based on these determinations I grant the Tenant a monetary Order for $625.00. In the event 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 17, 2015

Residential Tenancy Branch