



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

The male Landlord stated that on November 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent by registered mail to the Tenant at a forwarding address provided by the Tenant. The male Landlord cited a tracking number that corroborates this statement. 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.

Preliminary Matter

The Landlord withdrew the claim for unpaid rent from September of 2014, as the Landlord was awarded compensation for rent from that month at a hearing on October 09, 2014. As the Landlord did not file this Application for Dispute Resolution until October 14, 2014, the Landlord did not have the right to make a claim for unpaid rent from September of 2014.

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 male Landlord stated that:

- this tenancy began on October 01, 2009;
- the Tenant paid a security deposit of \$900.00 on September 17, 2009;

- the Landlord did not complete a condition inspection report at the start of the tenancy;
- at the end of the tenancy the rent was \$1,668.00 per month;
- the Tenant vacated the rental unit on September 04, 2014; and
- the Tenant provided a forwarding address, in writing, on November 07, 2014.

The Landlord is seeking compensation, in the amount of \$2,210.00, for cleaning the rental unit. The male Landlord stated that a large amount of personal property was left in the rental unit and that significant cleaning was required. The Landlord submitted photographs of the rental unit that corroborate this testimony.

The male Landlord stated that the Landlords spent 40 hours cleaning the rental unit, for which the Landlord is seeking compensation of \$1,200.00. The male Landlord stated that the Landlord also paid a private company \$210.00 to finish cleaning the rental unit, a receipt for which was submitted in evidence. The male Landlord stated that the Landlord also paid \$600.00 to dispose of property left in the rental unit, a receipt for which was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$1,669.70, for painting the rental unit. The male Landlord stated that the Landlords spent 50 hours painting the rental unit, for which the Landlord is seeking compensation of \$1,300.00. The male Landlord stated that the Landlord also paid \$369.70 for paint supplies, a receipt for which was submitted in evidence.

The Landlord submitted photographs to show the rental unit required painting in a few areas. The male Landlord stated that the rental unit was last painted in August of 2009.

The Landlord is seeking compensation, in the amount of \$233.53, for repairing the plumbing. The male Landlord stated that a friend spent several hours repairing the plumbing, for which he paid his friend \$200.00. The male Landlord stated that the Landlord also paid \$33.53 for plumbing supplies, a receipt for which was submitted in evidence. The male Landlord stated that he does not know what was wrong with the plumbing.

The Landlord is seeking compensation, in the amount of \$100.00, for repairing the blinds. The male Landlord stated that the Landlord spent one hour reinstalling the blinds, which were falling down at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$15.00, for replacing three light bulbs that had burned out during the tenancy. The male Landlord stated that receipts for the light bulbs were not submitted, as the Landlord used lightbulbs that they had in stock.

The Landlord is seeking compensation, in the amount of \$96.74, for replacing a glass shelf in the refrigerator. The Landlord submitted receipts of the broken shelf. The Landlord did not submit a receipt for the replacement glass.

Analysis

On the basis of the undisputed evidence, I find that the Landlord did not complete a condition inspection report at the start of the tenancy, as is required by 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 or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(4) of the *Act*. As I have concluded that the Landlord failed to comply with section 23(4) of the *Act*, I find that the Landlord's right to claim against the security 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 24(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 security deposit to the Tenant.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which includes \$1,200.00 for the 40 hours they spent cleaning the unit; \$210.00 they paid to have the cleaning finished by a professional cleaning company; and \$600.00 to dispose of property.

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 interior paint is four years. The evidence shows that the rental unit was last painted in August

of 2009 and was, therefore, over four years old when this tenancy ended in September of 2014. I therefore find that the paint had exceeded its life expectancy and that the Landlord is not entitled to recover any of the cost of repainting the rental unit.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the plumbing in the rental unit or whether it simply needed repair as the result of normal wear and tear. In reaching this conclusion I was heavily influenced by the male Landlord's testimony that he does not know what was wrong with the plumbing. As he does not know what was wrong with the plumbing, I find it entirely possible that the repair was simply the result of normal wear and tear.

As section 37 of the *Act* does not require tenants to repair damage arising from normal wear and tear, I find that the Landlord has failed to establish that the Tenant was required to repair the damaged plumbing. I therefore dismiss the Landlord's claim for repairing the plumbing.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the blinds that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the hour the Landlord spent repairing the drapes, in the amount of \$25.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to replace lightbulbs that burned out during the tenancy. I find it reasonable that the Landlord did not provide receipts for the lightbulbs, as the Landlord used lightbulbs they had in their possession. I find that the claim of \$15.00 for replacing the lightbulbs is reasonable and I find the Tenant must compensate the Landlord in this amount.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the broken shelf in the refrigerator. In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage by providing a receipt whenever it is reasonably possible to do so. In these circumstances, I find that the Landlord failed to submit a receipt for the cost of a new shelf. As the Landlord has submitted insufficient evidence to show the cost of replacing the shelf, for which a receipt could be easily obtained, I dismiss the Landlord's claim for replacing the shelf.

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

The Landlord has established a monetary claim, in the amount of \$2,100.00, which is comprised of \$2,050.00 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

The Landlord's claim of \$2,100.00 must be reduced by the \$1,800.00 (double the security deposit) that I have determined must be paid to the Tenant.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$300.00 and I grant the Landlord a monetary Order for the amount. 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: May 27, 2015

Residential Tenancy Branch