



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 cross applications.

On October 14, 2014 the Landlord filed an 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 or utilities; 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 18, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were personally delivered to a forwarding address provided by the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 08, 2014 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of all or part of the security deposit; for an Order requiring the Landlord to make repairs to the rental unit; and to recover the fee for filing this Application for Dispute Resolution. The Tenant stated that no documents were served to the Landlord in regard to these proceedings.

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.

Preliminary Matter #1

As no documents were served to the Landlord by the Tenant, the Tenant's Application for Dispute Resolution is dismissed. As the security deposit and pet damage will be either retained by the Landlord or returned to the Tenant on the basis of the Landlord's Application for Dispute Resolution, the Tenant does not have the right to file another

claim for the return of the security deposit. The Tenant retains the right to file another Application for Dispute Resolution for any other issues raised in the Application for Dispute Resolution filed on December 08, 2014.

Preliminary Matter #2

On the Monetary Order Worksheet and the Application for Dispute Resolution the Landlord has indicated she is seeking a monetary Order for \$831.87. On the Monetary Order Worksheet the Landlord clearly outlines the compensation she is seeking for damage to five areas, which totals \$831.87. These are the damages that will be considered at these proceedings.

On the Monetary Order Worksheet the Landlord has indicated many additional areas in the rental unit that have been allegedly damaged, although she does not indicate that she is seeking compensation for those damages. As those damages are not included in the monetary claim for \$831.87, they will not be considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid utilities and damage to the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on May 01, 2013;
- the Tenant agreed to pay rent of \$1,400.00 per month;
- the Tenant paid a pet damage deposit of \$700.00;
- the Tenant paid a security deposit of \$700.00; and
- the Landlord did not complete a condition inspection report at the start of this tenancy.

The Landlord stated the tenancy ended on September 30, 2014 and the female Tenant stated that it ended on October 01, 2014. The female Tenant stated that the Tenant provided a forwarding address, via email, on October 07, 2014. The Landlord acknowledged receiving this email, although she believes it was received on October 06, 2014.

The Landlord and the Tenant agree that in October of 2014 the Landlord sent the Tenant a cheque for \$562.00, which represents a partial refund of the pet damage/security deposit.

The Landlord is seeking compensation of \$387.00 for two unpaid utility bills, which were submitted in evidence. One of the bills shows charges of \$28.45 for water consumption

and \$21.59 for sewer consumption. One of the bills shows charges of \$103.20 for water consumption and \$78.34 for sewer charges. The Landlord and the Tenant agree that the Tenant has not paid any portion of these bills.

The Landlord and the Tenant agree that on July 07, 2013 the parties agreed, in writing, that the Tenant would start to pay the water bill. A copy of the written agreement was submitted in evidence.

The female Tenant argued that she was only obligated to pay for the water while two additional people were living in the rental unit; that those two people moved out in October of 2013; and that she did not inform the Landlord that had moved out. The Landlord argued that the agreement to pay the water bill was, in part, because additional people would be living in the rental unit and, in part, because the Tenant wanted a small pool in the backyard.

The Landlord is seeking compensation, in the amount of \$200.00, for repairing a hole in the wall in the bedroom and the main living area. The Landlord stated that the Tenant had partially repaired both holes and that she spent 6 hours finishing the repair and touching up the paint.

The Landlord submitted photographs of the walls in the rental unit. Several areas on the walls appear to have been repaired. The Landlord stated that photograph #1 and photograph #3 are the two damaged areas for which she is seeking compensation.

The female Tenant stated that the Tenant repaired the drywall in the bedroom but did not paint it. She stated that the Tenant did not repair the drywall in the main living area as the wall was not damaged. She stated that the Tenant left paint in the rental unit that the Landlord could have used to touch up the walls.

The Landlord stated that none of the paint left in the rental unit was the correct colour for touching up the damaged areas. The Landlord submitted two receipts from a building supply company. She stated that \$60.00 of these receipts was for purchasing paint and materials to repair the walls.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing a closet door. The Landlord and the Tenant agree that the door was damaged during the tenancy. The Landlord submitted a photograph of the door, which has a hole in it.

The Landlord stated that she 2 hours replacing the door. The Landlord submitted a receipt from a building supply company. She stated that \$35.00 of the receipt was for a door.

The Landlord is seeking compensation, in the amount of \$150.00, for repairing the door jamb for the door that leads from outside into the garage. The Landlord submitted a photograph of the damaged door jam.

The female Tenant stated that the photograph of the door jamb represents the condition of the door jamb at the start of the tenancy and that the jamb was not damaged during the tenancy. The Landlord contends the door jamb was not damaged at the start of the tenancy.

Analysis

Section 24(2) of the *Residential Tenancy Act (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*. Although the Landlord did not complete a condition inspection report at the start of the tenancy, and therefore did not comply with section 23(4) of the *Act*, I find that she still has the right to claim against the deposit for unpaid utilities.

On the basis of the undisputed testimony and the letter submitted in evidence, dated July 07, 2013, I find that after this tenancy began the Tenant agreed, in writing, to pay for water consumed during the tenancy. As the Tenant agreed, in writing, to pay for water consumption, I find that the Tenant was obligated to do so.

I note that the agreement to pay for water consumption was based, in part, on the Tenant's desire to have a pool in the backyard and, in part, on the Tenant's wish to have two additional people move into the rental unit. As the written agreement does not specify if, or when, the agreement to pay the water will end, I find that the Tenant was obligated to pay for water until the parties mutually agreed to end that term of their agreement.

As the Tenant has not paid any portion of the utility bills submitted in evidence, I find that the Tenant must pay water charges of \$131.65. I dismiss the remainder of the Landlord's claim for utilities, as there is no evidence that the Tenant agreed to pay for sewage costs, which are included on the two utility bills submitted in evidence.

When making a claim for damage to a rental unit a landlord has the burden of proving the 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 damaged the wall in the bedroom. On the basis of the testimony of the Landlord and the photographs submitted in evidence, I find that the Tenant also damaged the wall in the main living area. Although the Tenant contends the wall was not damaged at the end of the tenancy, I find it illogical to conclude that the Landlord would have repaired this wall, which is in otherwise good condition, if it was not in need of repair.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the walls that were damaged at the end of the tenancy. I therefore find

that the Landlord is entitled to compensation for the \$60.00 paid for supplies. I find that she is also entitled to compensation for the six hours she spent repairing the wall. Although I would typically grant compensation at a rate of \$25.00 per hour, in these circumstances the Landlord has only sought compensation for \$20.00 per hour and I find she is entitled to her full claim of \$140.00.

In awarding compensation for repairing the walls, I have placed little weight on the Tenant's submission that paint was left in the rental unit that could have been used to touch up the repairs. In the event that paint was left in the rental unit that could have been used for touch ups, the Tenant had an obligation to ensure the Landlord understood the paint was available for touch ups. Had the Landlord understood there was paint available for touch ups, I find it illogical to conclude that she would have purchased more paint.

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 a closet door that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the \$35.00 paid for the door and \$50.00 for the two hours she spent repairing the door, at an hourly rate of \$25.00.

I find that the Landlord submitted insufficient evidence to establish that the Tenant damaged the door jamb leading into the garage. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's claim that the door jamb was not damaged at the start of the tenancy or that refutes the Tenant's claim that it was damaged at the start of the tenancy.

As the Landlord has failed to establish that the door jamb was in good condition at the start of the tenancy, I cannot conclude that it was damaged during the tenancy. As the Landlord has failed to establish that the door jamb was damaged during the tenancy, I dismiss her claim for repairing the door.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$466.65, which is comprised of \$285.00 for damages, \$131.65 in unpaid utilities, 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 \$466.65 from the Tenant's security deposit, in full satisfaction of this monetary claim.

In the absence of evidence to show that the Landlord is entitled to retain the remaining \$933.35 of the security and pet damage deposits, it must be returned to the Landlord.

As the Landlord returned \$562.00 to the Tenant in October of 2014, she is now only obligated to return \$371.35.

Based on these determinations I grant the Tenant a monetary Order for the amount \$371.35. 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: May 27, 2015

Residential Tenancy Branch

