



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications.

On November 27, 2014 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on December 01, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenant Branch were sent to the Tenants, via registered mail. The male Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 12, 2014 the Landlords filed an Application for Dispute Resolution, in which the Landlords 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 male Landlord stated that on, or about, December 17, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenant Branch were sent to the Tenants, via registered mail. The male Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

I note that the evidence in my possession from the Landlord includes several black and white images the rental unit. The male Landlord stated that colour images were submitted to the Service BC and he speculates that the images I have are not in colour because they were faxed by Service BC. He stated that the evidence package served to the Tenant on, or about, December 17, 2014 included the black and white images, rather than the colour images.

As the colour images were not served to the Tenants as evidence for these proceedings, I find that I would be unable to consider those images even if they were in my possession. I am satisfied, based on the testimony of all parties, that the black and white images in my possession are the same as the black and white images that were

served to the Tenants as evidence and I therefore find that those are the images that will be considered as evidence for these proceedings.

The male Landlord stated that the copies of the colour images that were submitted to Service BC were provided to the Tenants on September 06, 2015. The male Tenant acknowledged receiving images from the Landlord on September 06, 2015 but he cannot recall if they were in colour or black and white. He stated that is no longer in possession of those images. As the colour images were not served as evidence for these proceedings and the Tenants are no longer in possession of the images given to them in September, the colour images will not be considered when determining this matter.

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

During the hearing the male Landlord stated that the Landlords are seeking compensation for damages not listed on the Monetary Order Worksheet, including damage to a bathroom cabinet. The Landlords were advised that only claims listed on the Monetary Order Worksheet will be considered at the proceedings, which total \$561.74.

Section 59(2) of the *Residential Tenancy Act (Act)* requires applicants to provide full details of a claim for compensation for damages in the Application for Dispute Resolution. The Landlords provided full details of their monetary claim for \$561.74 in the Monetary Order Worksheet.

I find that proceeding with the any claims for damages not listed on the Monetary Order Worksheet would be prejudicial to the Tenants, as the absence of clear notice of additional claims makes it difficult, if not impossible, for the Tenants to adequately prepare a response to additional claims.

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 May 01, 2013;
- the Tenants agreed to pay rent of \$1,050.00 by the first day of each month;
- the Tenants paid a security deposit of \$525.00; and
- a condition inspection report was not completed at the beginning of this tenancy.

The male Landlord stated that the tenancy ended on September 03, 2014 and the male Tenant stated that it ended on August 31, 2014.

The male Landlord stated that when the tenancy ended the Landlord completed a condition inspection report, in the absence of the Tenant. He stated that the Landlord did not give the Tenant notice of a final opportunity to inspect the rental unit on the form generated by the Residential Tenancy Branch. He stated that the Landlord gave the Tenant many opportunities to meet to inspect the rental unit.

The male Landlord stated that he believes the final written opportunity to inspect the rental unit was provided on September 06, 2014, via email. A copy of this email was submitted in evidence, in which the male Landlord informs the Tenants the rental unit has been cleaned but the damage to the unit can still be viewed. The male Tenant acknowledged receiving this email.

The male Tenant stated that the parties communicated regarding an inspection of the unit at the end of the tenancy but they could not find a date/time that was satisfactory to both parties.

The male Tenant stated that the Tenants provided the Landlord with a forwarding address, via email, on September 21, 2014. A copy of this email was submitted in evidence, which contains an address with a street address and a postal code, but not the name of the community.

The male Landlord stated that the forwarding address was received on September 21, 2014 but he did not recognize the address as being an address in their community. He stated that he did not receive a complete forwarding address for the Tenants until the Landlords were served with the Tenants' Application for Dispute Resolution.

The Landlords are seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The male Landlord stated that a significant amount of cleaning was required, as outlined in the document dated September 06, 2015 which the Landlords refer to as a "Condition Report". He stated that the Landlords each spent approximately two hours cleaning the rental unit at the end of the tenancy.

The male Tenant stated that he helped the female Tenant and third occupant clean the rental unit; that he viewed the rental unit after it had been cleaned; and that he believes the rental unit was left in reasonably clean condition.

The Landlords are seeking compensation, in the amount of \$100.00, for changing the lock in the rental unit. The male Landlord stated that the Tenants were provided with one key to the front door and one key to the basement door at the start of the tenancy and that the Tenants did not return the key to the basement door.

The male Tenant stated that they were provided with one key to the front door at the start of the tenancy; they were not provided with a key to the basement door; they assumed the key they were given opened the basement door and the front door; they did not lock the doors of the rental unit during their tenancy; and at the end of the tenancy they returned the single key they were given.

The Landlords are seeking compensation, in the amount of \$311.74, for repairing a hole in the bathroom wall, which includes the cost of repairing the wall and painting the repair. The male Tenant agreed the wall was damaged when the door to the bathroom was opened with excessive force, causing it to bang into the wall.

The male Landlord stated that he paid \$220.50 for repairing the damage to the wall and for repairing a cabinet in the bathroom. A copy of the invoice for these repairs was submitted in evidence.

The male Landlord stated that paint supplies used to paint the wall were purchased for \$41.24. The Landlords submitted a receipt for paint that corroborates this claim. The Landlords are also seeking compensation of \$50.00 for the two hours it took the male landlord to paint the wall.

The Landlords are seeking compensation, in the amount of \$50.00, for removing a rope from a tree on the residential property. The Landlords and the Tenants agree that the Tenants attached a piece of rope to a tree on the residential property and that a portion of that rope was left on the tree at the end of the tenancy.

The male Tenant stated that the rope was difficult to remove without a ladder so he left a portion of it on the tree. The male Landlord stated that the rope was difficult to remove and that he spent approximately two hours removing the rope.

Analysis

I find that this tenancy ended no later than September 03, 2014 and that the Landlords received a complete forwarding address for the Tenants when they received the Tenants' Application for Dispute Resolution that was mailed on December 01, 2014.

Section 23(4) of the *Residential Tenancy Act (Act)* requires a landlord to complete a condition inspection report at the start of a tenancy. On the basis of the undisputed evidence, I find that the Landlords 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 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* by completing a condition inspection report, I find

that the Landlord's right to claim against the security deposit for damage is extinguished.

Section 35(2) of the *Act* stipulates that a landlord must offer a tenant at least two opportunities to participate in an inspection of the rental unit at the end of the tenancy, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant's right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

In the absence of evidence that shows the Landlord provided the Tenant with a second opportunity to inspect the rental unit on the approved form and in the absence of evidence that shows the Landlord informed the Tenant of the aforementioned information regarding the Tenant's rights and obligations regarding the final inspection, I find that the Landlord failed to comply with section 35(2) of the *Act*.

Section 36(2)(a) 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 35(2) of the *Act*. As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit 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 Landlords' right to claim against the security deposit has been extinguished, pursuant to section 24(2) and 36(2) of the *Act*, the Landlords do not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlords 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 Tenants' forwarding address in writing. I find that the Landlords did not comply with section 38(1) of the *Act*, as the Landlords have not yet returned any portion of the security deposit.

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 Landlords did not

comply with section 38(1) of the *Act*, I find that the Landlords must pay double the security deposit to the Tenants.

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 Landlords submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition, as is required by section 37(2)(a) of the *Act*. In reaching this conclusion I was heavily influenced by the lack of evidence that corroborates the Landlords' claim that it required additional cleaning and that refutes the Tenants' submission that it was left in reasonably clean condition.

As cleanliness is often highly subjective, photographs of a rental unit are often the best evidence to support a claim for cleaning. This allows an impartial party to determine whether additional cleaning is required. In these circumstances, the black and white images submitted by the Landlords are of such poor quality they do not assist in determining whether additional cleaning was required.

As the Landlords submitted insufficient evidence to establish that additional cleaning was required, I dismiss the Landlords' claim for cleaning the rental unit.

I find that the Landlords submitted insufficient evidence to establish that two keys were provided at the start of the tenancy. In reaching this conclusion I was heavily influenced by the lack of evidence that corroborates the Landlords' claim that two keys were provided and that refutes the Tenants' submission that only one key was provided.

A condition inspection report completed at the start of a tenancy is the most common method of establishing the number of keys provided at the start of the tenancy. In these circumstances, a condition inspection report was not completed at the start of the tenancy. As the Landlords submitted insufficient evidence to establish that two keys were provided at the start of the tenancy, I dismiss the Landlords' claim for replacing a lock as a result of only one key being returned at the end of the tenancy.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the hole in the bathroom wall. I therefore find that the Landlords are entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

On the basis of the invoice submitted in evidence, I find that the Landlords paid \$220.50 for repairing the wall and for installing a cabinet. As the invoice does not establish how much was paid to repair the wall and how much was paid to install the cabinet, I find it

reasonable to conclude that 50% of the invoice was for repairing the wall. I therefore find that the Landlord is entitled to compensation of \$110.25 for repairing the wall.

On the basis of the undisputed testimony and the receipt submitted in evidence, I find that the Landlords are entitled to compensation for painting the wall, in the amount of \$91.24. This includes compensation for \$41.24 for paint supplies and \$50.00 for the time the male Landlord spent painting the wall.

On the basis of the undisputed evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to remove the entire rope that they attached to a tree on the r property. I therefore find that the Landlords are entitled to compensation for the two hours the male Landlord spent removing the rope, in the amount of \$50.00.

I find that the Applications for Dispute Resolution filed by both parties both have merit and that neither party is obligated to compensate the other party for the cost of filing an Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim of \$1,050.00, which is double the security deposit that was paid. The Landlords have established a monetary claim of \$251.49 in damages.

After offsetting the two claims I grant the Tenants a monetary Order for the amount \$798.51. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, 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: June 16, 2015

Residential Tenancy Branch