Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF, O

Introduction

This hearing was convened in response to cross applications.

On October 27, 2015 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary "other"; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on October 28, 2014 the Application for Dispute Resolution, the Notice of Hearing, and 2 pages of evidence the Tenant wishes to rely upon as evidence were sent to the Tenant, via registered mail. The male Landlord acknowledged receipt all these documents and they were accepted as evidence for these proceedings.

On November 19, 2015 the Landlords filed an Application for Dispute Resolution, in which the Landlord applied 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 November 24, 2014 the Application for Dispute Resolution, the Notice of Hearing, and 14 pages of evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant stated that he received all of these documents, with the exception of:

- an undated document in which the Landlord informs the Tenant they are trying to arrange a final house inspection for September 30, 2014; and
- an envelope addressed to the Landlord with the rental unit as the return address.

All of the documents the Tenant acknowledged receiving were accepted as evidence for these proceedings.
For reasons outlined in my interim decision, the hearing was adjourned. The hearing was reconvened on September 15, 2015 and was concluded on that date. The Tenant did not attend the reconvened hearing on September 15, 2015 and the hearing proceeded in his absence.

At the reconvened hearing the male Landlord stated that the 40 photographs the Tenant did not acknowledged receiving in the first evidence package were mailed to the Tenant

on, or about, June 20, 2015. In the absence of evidence to the contrary, I find that this evidence was served to the Tenant and they were accepted as evidence for these proceedings.

At the reconvened hearing the male Landlord stated that the two documents the Tenant did not acknowledged receiving in the first evidence package were mailed to the Tenant on, or about, July 18, 2015. In the absence of evidence to the contrary, I find that these documents were served to the Tenant and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?
Are the Landlords entitled to retain all or part of the security deposit or should it be returned to the Tenant?

Background and Evidence

The male Landlord stated that:

- this tenancy began on January 10, 2012;
- the parties had a written tenancy agreement;
- 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;
- this tenancy ended on September 30, 2014; and
- he a few days after October 15, 2014 he received a letter from the Tenant in which the Tenant provided his forwarding address.

The Landlords are seeking compensation, in the amount of $211.60, for repairing the tile floor in the kitchen/living room. This includes $70.00 for tiles, $61.60 for a "scrubber", and $80.00 in labour.

The male Landlord stated that the floor was newly installed at the start of the tenancy; the Tenant stripped the wax off the tile floor but did not re-seal the floor; the Tenant stacked piles of beer cans on the floor; and the Tenant allowed moisture to accumulate on the floor, all of which caused the tiles to come loose.

The Landlords submitted no receipts for the tiles or "scrubber". The male Landlord stated that he spent approximately seven hours repairing the floor.
The Landlords are seeking compensation, in the amount of $53.20, for changing the lock to the rental unit. The male Landlord stated that the locks to the rental unit were changed when the Tenant failed to complete the condition inspection report at 1:00 p.m. on September 30, 2014. He stated that the keys to the rental unit were returned by the Tenant "around supper time" on September, however the locks had already been changed.

The Landlords are seeking compensation, in the amount of $1,038.73, for re-painting the rental unit. The male Landlord stated that the unit needed to be re-painted as the Tenant painted the unit dark colours without permission from the Landlord. He stated that the rental unit had been newly painted prior to the start of the tenancy.

The claim includes $640.00 in labour and $438.73 for paint. The male Landlord stated that he spent 40 hours re-painting the rental unit. No receipts were submitted for supplies.

The Landlords are seeking compensation, in the amount of $243.00, for cleaning the rental unit. The male Landlord stated that the Landlords spent 16 hours cleaning the rental unit, which included cleaning the floors, walls, and appliances.

The Landlords are seeking compensation, in the amount of $45.00, for cleaning the yard of the unit. The male Landlord stated that the Tenant left garbage in the yard that had to be taken to the dump, which tool approximately 3 hours.

The Landlords are seeking compensation, in the amount of $387.15, for lost revenue for the first two weeks in October. The male Landlord stated that the rental unit could not be rented for those two weeks because of the need to clean and repair the rental unit. He stated that the rental unit was empty for the following nine months, as they were being very “fussy” with perspective tenants.

The Landlords submitted photographs that support the claims for compensation.

Analysis

Section 38(1) of the *Residential Tenancy Act (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.

As the Landlords did not file an Application for Dispute Resolution until November 19, 2015; the tenancy ended on September 30, 2014; and the Landlord received the Tenant’s forwarding address sometime in October of 2014, I find that the Landlords failed to comply with section 38(1) of the *Act*.

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 Landlords did not comply with section 38(1) of the *Act,* I find that the Landlords must pay the Tenant double the security deposit.

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 damage or loss occurred; establishing 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 he failed to repair the tile floor that was damaged during the tenancy. I therefore find that the Landlords are entitled to compensation for the seven hours he spent repairing the floor, in the amount of $80.00, which equates to less than $12.00 per hour. Although I would typically grant compensation in a greater amount for labour of this nature, the Landlords are only seeking $80.00 and I grant this claim in full.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant, whenever compensation for damages is being claimed. In these circumstances, I find that the Landlords failed to establish the true cost of supplies used to repair the floor and I therefore dismiss the claim for these supplies. This decision was influenced by the absence of any documentary evidence, such as receipts, that corroborates the Landlords' claim of $131.60 for supplies. In my view, applicants have an obligation to provide proof of such purchases whenever proof can, with reasonable diligence, be provided.

On the basis of the undisputed evidence I find that the Tenant failed to comply with sections 37(1) and 37(2) of the *Act* when he failed to return the keys to the rental unit by 1:00 p.m. on September 30, 2015. As the Landlords failed to provide documentary evidence, such as a receipt, to corroborate their claim that it cost $53.30 to change the locks, I dismiss the claim for changing the locks.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to return the walls of the rental unit to their original colours. I therefore find that the Landlords are entitled to compensation for the 40 hours he spent repainting the unit, in the amount of $640.00, which equates to $16.00 per hour. Although I would typically grant compensation in a greater amount for labour of this nature, the Landlords are only seeking $640.00 and I grant this claim in full.

As the Landlords failed to provide documentary evidence, such as a receipt, to corroborate their claim that they purchased $438.73 in painting supplies, I dismiss this portion of their claim.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlords are entitled to compensation for the 16 hours spent cleaning the rental unit, in the amount of $243.00, which equates to less than $16.00 per hour. Although I would typically grant compensation in a greater

amount for labour of this nature, the Landlords are only seeking $243.00 and I grant this claim in full.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the yard of the rental unit in reasonably clean condition. I therefore find that the Landlords are entitled to compensation for the 3 hours spent cleaning the rental unit, in the amount of $45.00, which equates to $15.00 per hour. Although I would typically grant compensation in a greater amount for labour of this nature, the Landlords are only seeking $45.00 and I grant this claim in full.

Although I accept that the Landlords spent the first two weeks of October of 2014 cleaning/repairing the rental unit, I find that the lost revenue they experienced during that period was more directly attributable to their delay in locating a new tenant for the unit, given that the rental unit remained empty for approximately nine months. I therefore find that the Tenant is not obligated to compensate the Landlords for any lost revenue experienced after the tenancy ended.

I find the Application for Dispute Resolution that was filed by both parties has merit and that they are, therefore, each responsible for the costs of filing their own Applications.

Conclusion

The Landlords have established a monetary claim of $1,008.00 in damages.The Tenant has established a monetary claim of $750.00, which is double the security deposit.

After offsetting the two claims the Tenant owes the Landlord $258.00 and I am granting a monetary Order in that amount. In the event that the Tenant does not voluntarily 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: September 17, 2015

Residential Tenancy Branch