



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; 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 June 17, 2015 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 submitted Canada Post documentation 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.

On August 28, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were personally served to the Tenant by on August 14, 2015. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

Preliminary Matter

On August 28, 2015 the Landlord submitted 49 pages of evidence to the Residential Tenancy Branch, which were personally served to the Tenant by on August 14, 2015. The package included a copy of the original Monetary Order Worksheet, on which the Landlord has made numerous additional claims with a "revised amended total" of \$17,933.29.

At the hearing the Landlord was advised that none of the claims on the "amended" Monetary Order Worksheet would be considered at these proceedings and that only the

claims outlined on the original Monetary Order Worksheet would be considered at these proceedings.

The decision to limit the claims to those outlined on the original Monetary Order Worksheet was based, in part, on rule 2.2 of the Residential Tenancy Branch Rules of Procedure, which stipulates that “the claim is limited to what is stated in the application”.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure permit an applicant to amend an Application for Dispute Resolution if the dispute resolution hearing has not yet commenced. In circumstances such as these, where the Application for Dispute Resolution has already been served to the Tenant, the rule stipulates that a copy of the amended application must be served to the respondent so that they receive it at least 14 days before the scheduled date for dispute resolution hearing.

Rule 2.11 of the Residential Tenancy Branch Rules of Procedure further stipulates that an amended application must be clearly identified and be provided separately from all other documents. I find that the Landlord did not amend this Application for Dispute Resolution in accordance with rule 2.11, as she did not serve an amended Application for Dispute Resolution. Rather, she served an amended Monetary Order Worksheet.

Even if I accepted that the amended Monetary Order Worksheet constituted an amended Application for Dispute Resolution, I would conclude that the Landlord had not complied with rule 2.11 of the Residential Tenancy Branch Rules of Procedure because it was not provided “separately from all other documents”. I find that the amended Monetary Order Worksheet was located on page 23 of the 49 page evidence package served to the Tenant on August 14, 2015 and could very easily have been overlooked by the Tenant.

Rule 8.4 of the Residential Tenancy Branch Rules of Procedure stipulates that I can only consider evidence related to the matters stated on the Application for Dispute Resolution unless I permit the Landlord to amend the Application at the hearing to include other related matters. In these circumstances I declined to amend the Application for Dispute Resolution at the outset of the hearing to include the additional monetary claims made by the Landlord because I find the lack of clear notice of the additional claims place the Tenant at a significant disadvantage. I find it entirely possible that the Tenant would have attended this hearing if she had understood the Landlord was increasing the amount of her claim from \$7,146.00 to \$17,933.29.

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 stated that:

- this tenancy began on June 18, 2012;
- this tenancy ended on May 30, 2015;
- the tenancy agreement declares that rent is \$1,750.00 but the parties verbally agreed it would be \$1,600.00;
- the rent was due by the first day of each month;
- the Tenant paid a security deposit of \$800.00; and
- the Tenant provided a forwarding address, via email, although she is not certain when it was provided.

The Landlord claimed compensation of \$1,747.00 for unpaid rent. She stated that the Tenant still owes rent of \$393.55 for April of 2015 and \$1,547.00 for May of 2015, which totals \$1,940.55. She stated that she miscalculated the amount of rent owing when she filed her claim for \$1,747.00.

The Landlord is seeking compensation, in the amount of \$500.00, replacing the carpets on the stairs. She stated that the carpet was severely stained at the end of the tenancy and it smelled badly of cat urine. She stated she was unable to remove the odour from the carpet even with extensive cleaning.

The Landlord stated that the carpet, which was approximately five years old at the end of the tenancy, was in good condition at the start of the tenancy. She submitted a copy of her credit card statement that shows she paid \$501.31 to a carpet company, which she stated was paid to replace the carpet on the stairs.

The Landlord is seeking compensation, in the amount of \$670.00, for cleaning and painting the entry to the rental unit. She stated that the floor, the baseboards, and the lower portions of the walls had been contaminated with cat urine. She stated she had to clean these areas with a variety of cleaning agents; that she had to prime and paint the walls; and that she had to replace the baseboards before she could eliminate the odour. She stated that she spent approximately 48 hours cleaning/repairing this room.

The Landlord is seeking compensation, in the amount of \$445.00, for cleaning and painting the bathroom and for re-grouting the tile in the bathroom. She stated that the floor, the baseboards, and the lower portions of the walls had been contaminated with cat urine. She stated she had to clean these areas with a variety of cleaning agents; that she had to prime and paint the walls; that she had to replace the baseboards; and she had to replace the grout on the floor before she could eliminate the odour. She stated that she spent approximately 18 hours cleaning/repairing this room.

The Landlord is seeking compensation, in the amount of \$1,700.00, for cleaning and painting the ensuite bathroom, two bedrooms, the living room, the dining room, the

kitchen, and the hallway. She stated that the floor, the baseboards, and the lower portions of the walls had been contaminated with cat urine. She stated she had to clean these areas with a variety of cleaning agents; that she had to prime and paint the walls; and she had to clean pet excrement/urine from the floor before she could eliminate the odour. She stated that she spent approximately 89 hours cleaning/repairing these rooms.

The Landlord stated that most of the paint in the rental unit was approximately five years old at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$93.00, for cleaning the kitchen appliances. The Landlord stated that food was left in the refrigerator, debris was left in the dishwasher, and the oven/stove needed cleaning. She stated that she spent approximately 3 or 4 hours cleaning these appliances.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning supplies. She identified several cleaning supplies she had purchased, which exceed \$100.00. The Landlord submitted a copy of her credit card statement in evidence, which reflects these purchases.

The Landlord is seeking compensation, in the amount of \$200.00, for repairing a window and a window screen that was damaged during the tenancy. She stated that a metal piece of the window mechanism was broken and the screen was torn out of its frame. The Landlord did not submit a receipt for this repair and she stated it is not reflected on the credit card statement she submitted in evidence.

The Landlord is seeking compensation, in the amount of \$85.00, for re-keying the rental unit. She stated that the keys to the rental unit were never returned. The Landlord did not submit a receipt for this repair and she stated it is not reflected on the credit card statement she submitted in evidence.

The Landlord is seeking compensation, in the amount of \$306.00, for disposing of property left in the rental unit at the end of the tenancy. She stated that the Tenant left a large amount of furniture and garbage in the rental unit, which was taken to the recycle depot and the landfill. She stated that she hired a person to dispose of this property but she did not submit a receipt for his wages or for the cost of disposing of the property. The credit card statement submitted in evidence reflects the cost of one disposal fee, in the amount of \$14.10.

The Landlord is seeking compensation, in the amount of \$500.00, for replacing an exterior screen door that was damaged during the tenancy. The Landlord stated that this door was left insecure during a storm; that the door slammed against the house during the storm; and that the window in the door broke. The Landlord stated that the door was approximately five years old at the end of the tenancy. She stated that the door has not yet been replaced. The Landlord submitted an estimate for the door, in the amount of \$549.99.

The Landlord claimed compensation for lost revenue for June of 2015. At the hearing she applied to amend her claim to include a claim for lost revenue for July of 2015. She stated that she lost revenue as the aforementioned repairs rendered the rental unit unsuitable for occupation for two months.

The Landlord submitted photographs of the rental unit which corroborate her submission that the rental unit was not left in good condition.

The Landlord submitted an unsigned letter from an individual who declared that she viewed the rental unit at the end of the tenancy and that she noted the rental unit had a strong smell of cat urine; there was fur and blood on the wall; and the rental unit had not been cleaned.

The Landlord submitted an email from a second individual who declared that she viewed the rental unit at the end of the tenancy and observed cat urine, excrement, and vomit throughout the house.

The Landlord submitted a signed letter, dated August 06, 2015, from an individual who declared that she helped clean the rental unit at the end of the tenancy and that the "smell and filth was so bad I had to leave several times in order to return to do some more cleaning". Her letter provides many details that support the Landlord's claim, which I will not include in this decision.

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 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 still owes \$1,940.55 in rent for April and May of 2015. I therefore find that the Landlord is entitled to the full claim of \$1,747.00 for unpaid rent. I decline to award more than \$1,747.00 in rent as the Landlord did not clearly inform the Tenant that she was seeking compensation for a greater amount.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to:

- leave the carpet on the stairs in clean and good condition;
- leave the walls and floors in reasonably clean condition;
- leave the appliances in reasonably clean condition;

- repair the damage to the window screen;
- return the keys to the rental unit;
- remove all of her personal property and garbage; and
- repair the screen door.

On the basis of the credit card statement and the testimony of the Landlord I find that the Landlord paid \$501.31 to replace the carpet on the stairs.

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 carpet is ten years. The evidence shows that the carpet was five years old at the end of the tenancy. I therefore find that the carpet had depreciated by 50%, and that the Landlord is entitled to 50% of the cost of replacing the carpet on the stairs, which is \$250.66.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent approximately 48 hours cleaning and painting the entry room in an effort to eliminate the smell of urine. I find that her claim of \$670.00 is reasonable for the time she spent cleaning, as it equates to less than \$14.00 per hour, which is less than I would typically award for labour of this nature.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent approximately 18 hours cleaning and painting the bathroom in an effort to eliminate the smell of urine. I find that her claim of \$445.00 is reasonable for the time she spent cleaning, as it equates to approximately \$25.00 per hour, which I find to be reasonable compensation for labour of this nature.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent approximately 89 hours cleaning and painting the ensuite bathroom, two bedrooms, the living room, the dining room, the kitchen, and the hallway in an effort to eliminate the smell of urine. I find that her claim of \$1,700.00 is reasonable for the time she spent cleaning, as it equates to less than \$20.00 per hour, which is less than I would typically award for labour of this nature.

I note that I have not adjusted the claims for painting the rental unit to reflect the useful life of the paint in a rental unit, as the Landlord did not include the cost of paint supplies in her claims, although she submitted a credit card statement to establish these costs were incurred. As the Landlord spent an extensive amount of time cleaning and repairing the rental unit in preparation for painting, which is typically not required with painting where cat urine is not a factor, and the Landlord has not sought compensation

for the cost of painting supplies, I find it reasonable to not consider the depreciated value of the paint.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord spent between 3 and 4 hours cleaning the appliances in the rental unit. I find that her claim of \$93.00 is reasonable for the time she spent cleaning, as it equates to less than as it equates to approximately \$25.00 per hour, which I find to be reasonable compensation for labour of this nature.

I find that the Landlord's credit card statement and her testimony supports her claim of \$100.00 for supplies used to clean the rental unit and I grant her compensation in this amount.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage whenever compensation for damages is being claimed. I find that the Landlord failed to establish the true cost of repairing the damage to the window screen and the cost of re-keying the lock to the rental unit. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$200.00 to repair the screen and that it cost \$85.00 to re-key the locks, and I therefore dismiss these claims. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts.

I find that the Landlord is entitled to compensation, in the amount of \$14.10, for disposing of property left in the rental unit, as the Landlord's credit card statement corroborates that claim. I dismiss the rest of the Landlord's claims for disposing of property/garbage, as she has failed to submit documentary evidence to corroborate her claim that additional costs were incurred.

On the basis of the written estimate, I find that it will cost \$615.99 to replace the screen door. The Residential Tenancy Policy Guidelines show that the life expectancy of doors is twenty years. The evidence shows that the door was five years old at the end of the tenancy. I therefore find that the door had depreciated by 25%, and that the Landlord is entitled to 75% of the cost of replacing the door, which is \$461.99.

I find that Tenant's failure to comply with section 37(2) of the *Act* was directly related to the lost revenue the Landlord experienced in June of 2015, as extensive remediation was required. I therefore find that the Landlord is entitled to compensation for lost revenue, in the amount of \$1,600.00.

The Landlord's application to amend her claim to include compensation for lost revenue for July of 2015 was dismissed as a preliminary matter and does not need to be re-considered here.

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 \$7,181.75, which is comprised of \$1,747.00 in unpaid rent, \$1,600.00 in lost revenue, \$3,734.75 for damage to the rental unit, and \$100.00 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 the Tenant's security deposit of \$800.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$6,381.75. 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: September 16, 2015

Residential Tenancy Branch

