



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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

The Agent for the Landlord stated that on June 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and all of evidence the Landlord submitted to the Residential Tenancy Branch on June 17, 2015 and June 24, 2015 were sent to each Tenant, via registered mail. The male Tenant stated that both Tenants received these documents and that he is acting on behalf of the female Tenant in these proceedings. As the Tenant acknowledged receipt of the evidence it was accepted as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

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 Landlord and the Tenants agree that:

- this tenancy began on August 01, 2011;
- the Tenants paid a security deposit of \$425.00 and a pet damage deposit of \$200.00;
- a condition inspection report was completed at the end of the tenancy;
- the tenancy ended on May 31, 2015; and
- the Tenants provided the Landlord with a forwarding address, in writing, in April of 2015 when they provided notice of their intent to vacate the rental unit.

The Agent for the Landlord stated that a time to complete the condition inspection report at the end of the tenancy was not scheduled because the Tenants returned the keys to the rental unit before a date/time for the inspection could be scheduled. The Tenant stated that the keys were returned to the Landlord's mailbox on May 19, 2015. The Agent for the Landlord stated that the keys were located in the mailbox on May 20, 2015.

The Landlord is seeking compensation, in the amount of \$5.00, for replacing a light bulb that had burned out during the tenancy. The Tenant acknowledged that the Tenants did not replace a light bulb in the kitchen that had burned out during the tenancy.

The Landlord is seeking compensation, in the amount of \$25.00, for repairing a hole in a bedroom wall. The Tenant acknowledged that the Tenants did not repair the wall that was damaged during the tenancy.

The Landlord is seeking compensation, in the amount of \$485.00, for cleaning the rental unit. The Agent for the Landlord and the Tenant agree that the rental unit required a significant amount of cleaning at the end of the tenancy and that the photographs submitted in evidence fairly represent the amount of cleaning that was required at the end of the tenancy.

The Agent for the Landlord stated she does not know how long employees of the Landlord took to clean the rental unit. She stated that the Landlord pre-determines the cost of cleaning a variety of areas in any rental unit and that she is obligated to charge those amounts when it is determined an area requires cleaning regardless of the amount of time it takes to clean the various areas.

The Landlord submitted a "move in/move out charge analysis" form that indicates the Tenants are being charged the following cleaning costs:

- \$100.00 to clean the kitchen;
- \$90.00 to clean the bathroom;
- \$40.00 to clean the entry;
- \$85.00 to clean the living room;
- \$120.00 to clean three bedrooms;
- \$25.00 to clean the balcony; and
- \$25.00 to clean the storage area.

The Tenant stated that he believes the Landlord is charging an excessive amount for cleaning the rental unit. Although he acknowledged that the rental unit was "filthy", he estimates it would have taken approximately 3 hours to clean the rental unit.

Analysis

Section 35(2) of the *Residential Tenancy Act (Act)* requires landlords to offer tenants at least two opportunities to participate in a final inspection of the rental unit at the end of the tenancy, as prescribed by section 17 of the *Residential Tenancy Branch Regulation*. Section 17(2)(b) of the *Residential Tenancy Branch Regulation* stipulates that if the tenant is not available at the first time offered for a final inspection the landlord must propose a second opportunity, different from the time of the first opportunity, by providing the tenant with a notice in the approved form.

On the basis of the undisputed evidence I find that the Landlord did not comply with section 35(2) of the *Act* because the Landlord did not provide the Tenants with two opportunities to participate in a final inspection and the Landlord did not serve the Tenants with written notice of the time/date of the final inspection.

I find the fact that the Tenants returned the keys prior to May 31, 2015 is not relevant to my finding that the Landlord failed to comply with section 35(2) of the *Act*, as the Landlord received a forwarding address for the Tenants before the keys were returned. Given that the Landlord had a forwarding address for the Tenants and the keys were returned on May 19, 2015 or May 20, 2015, the Landlord had ample time to send the notice of final inspection to the Tenants' forwarding address.

Section 36(2)(a) of the *Act* stipulates that unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35(2) of the *Act*. As the Landlord did not comply with section 35(2) of the *Act* I find that the Landlord extinguished its 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 Landlord's right to claim against the security deposit/pet damage deposit has been extinguished, pursuant to section 36(2)(a) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit 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 pet damage deposit and 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 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 Tenants failed to comply with section 37(2) of the *Act* when they failed to replace a light bulb that burned out during the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the light bulb. Given the time it would take to replace the light bulb, I find the Landlord's claim of \$5.00 is reasonable.

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 bedroom wall that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for repairing the wall. Given the time it would take to repair the wall, I find the Landlord's claim of \$25.00 is reasonable.

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 leave the rental unit in reasonably clean condition at the end of the tenancy. In addition to establishing that the Tenants did not leave the rental unit in reasonably clean condition, the Landlord must also accurately establish the cost of cleaning the rental unit.

I find that the Landlord failed to establish the true cost of cleaning the rental unit. Typically awards for cleaning a rental unit are determined by compensating a party for the actual time spent cleaning the unit, based on a reasonable hourly rate, or compensating the Landlord for the actual amount paid to a third party to clean the unit. I am unable to award compensation in this manner in these circumstances, as the Agent for the Landlord does not know how long it took employees of the Landlord to clean the unit.

On the basis of the photographs submitted in evidence, I find that it would have taken more than three hours to clean the unit. On the basis of the Tenant's estimate that it would take three hours to clean the unit, however, I find that the Landlord is entitled to at least \$75.00 for cleaning the unit. In the absence of an estimate from the Landlord to determine how long it actually took to clean the rental unit, I am unable to award more than this amount for cleaning.

In adjudicating the claim for cleaning I have placed no weight on the "move in/move out charge analysis" form that was submitted in evidence. On the basis of the testimony of the Agent for the Landlord, I find that the amounts charged on that form are based on pre-determined costs of cleaning various areas in any given rental unit and are not an accurate reflection of the true costs of cleaning this rental unit. For example, the Landlord has charged \$30.00 for cleaning the toilet. While the photographs

demonstrate the toilet required cleaning, I find that the toilet could have been cleaned in less than ½ hour and that the charge of \$30.00 is excessive for the time it would have taken to clean the toilet.

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

Conclusion

The Tenants are entitled to the return of double their security/pet damage deposits, which is \$1,250.00.

The Landlord has established a monetary claim, in the amount of \$155.00, which is comprised of \$5.00 for replacing a light bulb, \$75.00 for cleaning the rental unit, \$25.00 for repairing the wall, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting these two claims I find the Landlord owes the Tenants \$1,095.00 and I grant the Tenants a monetary Order for that amount. 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: November 15, 2015

Residential Tenancy Branch

