



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, 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 Agent for the Landlord stated that on September 21, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to each Tenant, via registered mail. The Tenant stated that he and the female Tenant received these documents and that he is representing the female Tenant at these proceedings.

On February 29, 2016 the Landlord submitted five pages of evidence. The Agent for the Landlord stated that this evidence was personally served to the male Tenant on February 29, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties present at the hearing were given 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, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on August 01, 2014;
- the tenancy ended on July 31, 2015;

- the Tenants agreed to pay monthly rent of \$2,000.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,000.00;
- a condition inspection report was completed at the beginning and the end of the tenancy; and
- the Tenant did not provide a forwarding address, in writing, at the end of the tenancy.

The Landlord is seeking compensation of \$1,000.00 in unpaid rent. The Landlord and the Tenants agree that the Tenants only paid \$1,000.00 in rent for July of 2015.

The Landlord is seeking \$60.00 in NSF fees for rent cheques that were returned in June and July of 2015. The Landlord and the Tenants agree that rent cheques were returned in June and July and that the tenancy agreement requires the Tenants to pay \$30.00 whenever a rent cheque is returned by the Tenants' financial institution.

The Landlord is seeking \$25.00 in late fees because rent was not paid on time in June of 2015. The Landlord and the Tenants agree that rent was not paid on time in June of 2015 and that the tenancy agreement requires the Tenants to pay \$3.00 per day when rent is not paid on time.

The Landlord is seeking compensation, in the amount of \$1,062.75, for painting the rental unit. The Landlord and the Tenants agree that prior to the end of the tenancy the Tenants patched the wall in several places and painted the repairs with a paint that did not correctly match the original paint.

The Tenant stated that he contacted the male Landlord, the Agent for the Landlord, and the building manager in an attempt to obtain the correct paint code but neither party was able to provide the code. The Tenant stated that he subsequently purchased three gallons of paint and matched the paint as best he could.

The Agent for the Landlord stated that he advised the Tenant to estimate the colour of the paint using paint samples. The male Landlord stated that he advised the Tenant of the proper code, via email, within 48 hours of being asked for the code; however he did not submit a copy of the email.

The Landlord contends that the paint mismatch was very obvious. The Tenant stated that he believes the color was matched reasonably well but in some lights a different sheen could be detected.

The Landlord is seeking compensation of \$338.62 for cleaning the rental unit, including the carpet. The Agent for the Landlord stated that although the rental unit was left in reasonably clean condition at the end of the tenancy the unit and carpet needed cleaning after the walls were sanded in preparation for painting.

The Landlord is seeking compensation of \$13.53 for replacing two light bulbs that were burned out at the end of the tenancy. The Tenant agreed that two light bulbs may have been burned out at the end of the tenancy. The Landlord submitted a receipt for two light bulbs plus tax, in the amount of \$13.53.

The Landlord is seeking compensation of \$19.02 for replacing the furnace filter after the tenancy ended. The Tenant stated that in December of 2014 he replaced the furnace filter with a filter he found in the rental unit.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,000.00 by the first day of each month and that the Tenant has not paid \$1,000.00 of the rent due for July of 2015, rent for March or April of 2015. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,000.00 in outstanding rent to the Landlord.

Section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 when a cheque is returned by a tenant's financial institution or when rent is paid late. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The tenancy agreement provides for a \$30.00 fee for cheques that are not honoured by the Tenants' financial institution, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding NSF fees does not comply with the legislation and I therefore dismiss the Landlord's application for NSF fees of \$60.00. To be enforceable, the tenancy agreement must stipulate that the Tenants agree to NSF fees of \$25.00 or less.

The tenancy agreement provides for a \$3.00 daily fee for rent that is not paid on time, which equates to monthly fees of \$84.00-\$93.00, which is not authorized by the Regulation. I find that condition of the tenancy agreement regarding late fees does not comply with the legislation and I therefore dismiss the Landlord's application for late fees of \$25.00. To be enforceable, the tenancy agreement must stipulate that the Tenants agree to late fees of \$25.00 or less.

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.

Section 37(2) of the *Act* requires tenants to leave a rental unit undamaged except for reasonable wear and tear at the end of a tenancy. On the basis of the undisputed

evidence I find that the Tenants repaired and painted areas of the wall with a paint that did not precisely match the existing paint. I find that the Tenants made a reasonable effort to repair damage to the walls that occurred during the tenancy.

I find that the Landlord submitted no evidence to corroborate the male Landlord's testimony that he provided the Tenant with the proper paint codes for the repairs or that refutes the Tenant's testimony that he was not provided with paint codes. On the basis of the testimony of the Tenant and the Agent for the Landlord I find that the Agent suggested that the Tenant should estimate the colour and the Tenant complied with that suggestion.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In the absence of evidence that clearly establishes the Tenants were provided with the proper paint codes, I find that the Landlord did not take reasonable steps to minimize any losses arising from the Tenants' inability to precisely match the existing paint in the rental unit.

As the Landlord has failed to establish that they mitigated their losses associated to repairs being painted with paint that does not precisely match the existing paint, I dismiss the Landlord's claim for painting the rental unit and for cleaning that was required as a result of the need to paint.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to replace two light bulbs that burned out during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of two lightbulbs, which was \$13.53.

The *Act* does not require tenants to maintain a rental unit or to maintain furnaces or other appliances in the rental unit. I find that replacing a furnace filter is routine maintenance that should be completed by landlords. As the Tenants were not required to replace the furnace filter, I dismiss the Landlord's claim for replacing the filter.

I find that the Landlord's Application for Dispute Resolution 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 \$1,063.53, which is comprised of \$1,013.53 in damages and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenants' security deposit of \$1,000.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$63.53. In the event that the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: March 07, 2016

Residential Tenancy Branch