



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction:

This hearing was convened in response to cross applications.

On October 06, 2015 the Landlord filed an Application for Dispute Resolution in which she applied for a monetary Order for damage to the rental unit; to retain the security deposit; and to recover the fee for filing an Application for Dispute Resolution. The Landlord stated that on October 06, 2015 the Application for Dispute Resolution and the Notice of Hearing were served to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents.

On October 07, 2015 the Tenants filed an Application for Dispute Resolution in which they applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution. The female Tenant stated that on October 09, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted to the Residential Tenancy Branch on October 13, 2015 were served to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On October 15, 2015 the Landlord submitted 30 pages of evidence and 15 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenant on October 15, 2016. The Tenants acknowledged receipt of this evidence, with the exception of the 15th photograph, and it was accepted as evidence for these proceedings.

The Landlord described photograph 15 during the hearing and I am satisfied I can adjudicate this matter without physically viewing that photograph.

On April 05, 2016 the Tenants submitted 52 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was sent to the Landlord, via registered mail, April 05, 2016. The Landlord stated that she has not received this evidence nor has she received notice from Canada Post that they are attempting to deliver this evidence.

The Tenants were advised that the hearing would proceed in the absence of the evidence submitted on April 05, 2016; that the Tenants could speak to the evidence submitted on April 05, 2016; and at any point during the hearing the Tenants felt it necessary for me to view the evidence they could request an adjournment for the purposes of re-serving that evidence to the Landlord. The hearing concluded without the Tenants requesting an adjournment.

In determining that the evidence submitted on April 05, 2016 would not be accepted as evidence, I find there is insufficient evidence that the Landlord received notice of this evidence from Canada Post. I find it entirely possible that this evidence was lost or incorrectly delivered by Canada Post and that the evidence should be re-served before being accepted as evidence.

The parties 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 retain the return of security deposit or should it be returned to the Tenants?

Is the Landlord entitled to compensation for damage to the rental unit?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began on June 01, 2015;
- a security deposit of \$1,125.00 was paid;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- this tenancy ended on September 30, 2015, although the unit was vacated prior to that date;
- the Tenants left a note on a table in the rental unit prior to vacating the rental unit, in which the Tenants provided the Landlord provided a forwarding address;
- the Tenant did not authorize the Landlord to retain any portion of the security deposit; and
- the Tenant has not received a refund of any portion of the security deposit.

The Landlord is seeking \$580.00 for cleaning the rental unit, which includes cleaning the carpet. The Landlord stated that the rental unit was not left in clean condition and that she spent approximately 15 hours cleaning the unit at the end of the tenancy. The Landlord stated that the mark on the wall and the stain on the carpet were not present at the start of the tenancy.

The Landlord submitted photographs of the rental unit, which she stated were taken when she viewed the unit on September 27, 2015, which she contends accurately reflect the condition of the unit on that date.

The female Tenant stated that the photographs do not reflect the condition of the rental unit when it was vacated on September 18, 2015, and she made the following comments about the photographs:

- she does not recall there being hair in the corner of the ensuite bathroom, as depicted by photograph #1;
- the stain on the carpet in photograph #2 was present at the start of the tenancy;
- the mark on the wall in photograph #4 was present at the start of the tenancy;
- the deck was clean when the Tenants vacated the unit on September 18, 2015 and the dirt shown in photographs 5 and 6 must have accumulated after they vacated the unit;
- the windows were clean when the Tenants vacated the unit on September 18, 2015 and the dirt shown in photograph 7 must have accumulated after they vacated the unit;
- the frying pan depicted in photograph #8 is not dirty;
- she does not recall there being dirt on the floor as depicted in photographs #9 and #10, as she swept and washed those floors;
- the light fixture in photograph #14 was dirty at the start of the tenancy and could not be cleaned because it was too high; and
- some, but not all, of the blinds were cleaned at the end of the tenancy.

The Landlord and the Tenants agree that at the start of the tenancy the Tenants' rent was reduced by \$400.00 in compensation for cleaning the rental unit and by \$31.55 in compensation for replacing some light bulbs that were burned out.

The Landlord is seeking \$75.00 for repainting the ceiling above the bathtub, which she stated took her approximately two hours. The Landlord submitted a photograph of a stain on the ceiling above the bathroom, which she stated was not present at the start of the tenancy.

The female Tenant stated that they did not shower in this room and that they only used the spray shower on one occasion to clean the bathtub.

The Landlord is seeking \$25.00 for replacing the toilet paper holder that fell off the cabinet during the tenancy. She stated that she spent approximately 20 minutes reattaching the holder with the parts that were left in the unit.

The female Tenant acknowledged that the toilet paper holder fell off the cabinet during the tenancy and that they did not have the necessary tools to reattach it.

Analysis:

On the basis of the undisputed evidence I find that the Tenants paid a security deposit of \$1,125.00; that the tenancy ended on September 30, 2015; that the Tenants provided the Landlord with a forwarding address, in writing, in September of 2015; and that the Landlord has not returned any portion of the security deposit.

Section 23(3) of the *Residential Tenancy Act (Act)* requires a landlord to give a tenant at least two opportunities to inspect the rental unit at the start of the tenancy. Section 23(4) of the *Act* requires a landlord to complete a condition inspection report after the rental unit is inspected at the start of the tenancy. On the basis of the undisputed evidence I find that the Landlord did not schedule a time to inspect the rental unit at the start of the tenancy nor did she complete a condition inspection report at the start of the tenancy.

Section 24(2)(a) of the *Act* stipulates that the landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not offer a tenant two opportunities to inspect the rental unit at the start of the tenancy or the landlord does not complete a condition inspection report at the start of the tenancy. As I have concluded that the Landlord failed to comply with sections 23(3) and 23(4) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage 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 has been extinguished, pursuant to section 24(2) 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. As the Landlord has not yet returned the security deposit, I find that the Landlord did not 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 Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

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.

I find that the Landlord submitted insufficient evidence to establish that the stain on the carpet and the mark on the wall were not present at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that corroborates the Landlord's submission the stain and mark were not present at the start of the tenancy or that refutes the Tenants' submission that the stain and mark were present at the start of the tenancy. As the Landlord has failed to establish that the stain and mark on the wall were not present at the start of the tenancy, I cannot conclude that Tenants stained the carpet or marked the wall. I therefore cannot conclude that the Tenants are obligated to clean the stain on the carpet or the mark on the wall and I dismiss the Landlord's claim for compensation for time spent cleaning these areas.

Section 37 of the *Act* requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. It does not require a tenant to leave a rental unit in pristine condition. Even if I accepted the Landlord's submission that there was a small amount of dirt left on the bathroom and laundry room floors and that a light fixture and some blinds required dusting, I would find that the rental unit was left reasonably clean. I therefore dismiss the Landlord's claim for cleaning the interior of the rental unit.

I find that the exterior of the rental unit was also left reasonably clean and I therefore dismiss the Landlord's claim for cleaning the exterior of the rental unit. This decision was based on the testimony of the female Tenant, who stated that that windows and patio were cleaned when the Tenants vacated on September 18, 2015, and my conclusion that it is quite possible the dirt shown in photographs 5, 6 and 7 accumulated between the time the Tenants vacated the unit and the Landlord arrived at the unit nine days later.

Section 37 of the *Act* requires a tenant to leave a rental unit undamaged at the end of the tenancy except for reasonable wear and tear.

On the basis of the photograph submitted in evidence I find there is a water mark on the ceiling above the bathtub. I find that the mark is relatively minor and is consistent with damage that occurs when a shower is used for the purposes it was intended. I therefore find that this is reasonable wear and tear and that the Tenants are not obligated to repair this mark. I therefore dismiss the Landlord's application for compensation for repairing the mark.

On the basis of the undisputed evidence I find the toilet paper holder fell off the cabinet during the tenancy and that the Landlord reattached it using the pieces that were left in the rental unit. I find that toilet paper holders occasionally fall off when the screws work themselves loose, which I consider to be normal wear and tear. I therefore find that the Tenants were not obligated to reattach it and I dismiss the Landlord's application for compensation for reattaching the holder.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee paid to file an Application.

I find that the Landlord's Application for Dispute Resolution has been without merit and I dismiss her application to recover the fee paid to file an Application.

Conclusion:

The Tenants have established a monetary claim of \$2,300.00, which includes double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: April 27, 2016

Residential Tenancy Branch