



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlords applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 29, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to each Tenant, via registered mail, at the service address noted on the Application. The Landlords submitted Canada Post documentation that corroborates this statement. The Tenant stated that both Tenants received these documents.

On April 09, 2016 the Landlords submitted 59 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenants on February 29, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On June 20, 2016 the Tenant submitted 32 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on June 20, 2016. The Landlord stated that this evidence was received on June 21, 2016 and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlords' Application for Dispute Resolution does not provide full details of the Landlord's claim of \$34.22 for "repairs". In reaching this conclusion I was heavily influenced by the fact the Landlord has not

explained the nature of the repairs for which he is seeking compensation in his Application for Dispute Resolution.

I find that proceeding with the Landlords' claim for "repairs" at this hearing would be prejudicial to the Tenants, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claim.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenants moved into the rental unit in December of 2010 and a condition inspection report was completed and signed by the parties on November 29, 2010. The Tenant stated that the unit was vacated on December 15, 2013 and the Landlord stated that it was vacated on January 17, 2014 or January 18, 2014.

The Landlords are seeking compensation of \$775.91 for cleaning the rental unit, which includes \$575.00 in disposal fees, \$20.91 in cleaning supplies, and \$180.00 in labour. The Landlords submitted receipts for the disposal fees and cleaning supplies. The Landlord stated that he spent 12 hours cleaning the unit, for which he is seeking \$180.00.

The Landlord stated that the rental unit required significant cleaning at the end of the tenancy. The Landlords submitted photographs which the Landlord stated were taken at the end of the tenancy, which he says represent the condition of the interior and exterior of the unit at the end of the tenancy. He stated that he spent several hours cleaning and disposing of property left on the property, including furniture left inside the rental unit and a large amount of garbage left inside the storage shed and on the property beside the storage shed.

In regards to the photographs submitted by the Landlords the Tenant stated that:

- the loose garbage depicted in the Landlord's photographs on page #21 was not present at the end of the tenancy, although the garbage bags in the photographs were present at the end of the tenancy;
- the garbage depicted on the floor in the Landlord's photograph on page #22 was not from inside the rental unit;
- food was left in the fridge, as is shown in the Landlord's photograph on page #22;
- the items in the living room, as shown in the Landlord's photograph on page #23, were left at the end of the tenancy;
- the items in the laundry room, as shown in the Landlord's photograph on page #23, were not present at the end of the tenancy; and

- the items inside and outside of the storage shed, as shown in the Landlord's photograph on page #24, were in the shed at the start of the tenancy as left at the end of the tenancy, although the Tenants had moved some of the property from inside the shed to the yard during the tenancy; and
- the garbage in the storage shed was not noted on the condition inspection report at the start of the tenancy because the Tenants did not inspect the shed at the start of the tenancy.

The Tenant stated that there was a large amount of garbage left in the yard of the rental unit and in the storage shed at the start of the tenancy, some of which they did not notice because it was covered with snow. The Landlord and the Tenant agree that in the Spring of 2011 the Landlords paid to have a large amount of garbage removed from the yard of the rental unit that had been left by previous occupants. The Landlord argued that any garbage in the yard that accumulated after the Spring of 2011 was left by the Tenants, with the exception of two windows and a door that were left in the yard after some renovations. The Tenant stated that after the cleaning in the Spring of 2011 the Tenants found a large piece of carpet that was buried in the yard, which they left on the property.

The Tenant argued that the Landlords were compensated for disposal costs at a previous dispute resolution proceeding, the file number of which is recorded on the first page of this decision. She bases this in a copy of a Monetary Order Worksheet the Tenants submitted in evidence, which is the Monetary Order Worksheet the Landlords submitted for the previous proceeding. In this Monetary Order Worksheet the Landlords claimed \$575.00 in disposal costs.

The Landlords are seeking compensation of \$377.33 for painting the rental unit, which includes \$227.33 in supplies and \$150.00 in labour. The Landlords submitted receipts for the supplies. The Landlord stated that he spent 10 hours painting three rooms in the unit, for which he is seeking \$150.00.

In support of the claim for painting the Landlord stated that:

- he gave the Tenants permission to paint the rental unit providing he approved the colour of the paint;
- the Tenants painted three rooms in the rental unit without him approving the colour;
- he does not like the colour selected by the Tenants;
- he paid the Tenants for the cost of the paint;
- the rental unit was previously painted in November of 2010.
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In response to the claim for painting the Tenant stated that:

- the Landlord gave the Tenants permission to paint the rental unit;
- there was no agreement that the Landlord needed to approve the colour of the paint;
- the Tenants painted three rooms in the rental unit;

- the Landlord never told the Tenants he did not approve of the colour selected by the Tenants until they received notice of these proceedings; and
- the Landlord paid the Tenants for the cost of the paint.

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.

As the Tenant acknowledges that food was left in the refrigerator, as depicted by the photograph on page #22 of the Landlord's evidence and that items were left in the living room, as depicted by the photograph on page #23 of the Landlords' evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition at the end of the tenancy.

I favour the testimony of the Landlord, who stated that all of the photographs on pages 21, 22, and 23 of the Landlords' evidence fairly represent the condition of the rental unit and the rear deck at the end of the tenancy, over the testimony of the Tenant, who stated that some of the photographs show garbage in those areas that was not present at the end of the tenancy. In reaching this conclusion I was influenced by the condition inspection report that was completed at the start of the tenancy, which does not indicate that any significant cleaning was required at the start of the tenancy. As there was no evidence of a need to clean at the start of the tenancy I find it reasonable to conclude that any garbage left in the rental unit at the end of the tenancy accumulated during the tenancy.

In my view the garbage shown in the photographs on pages 21, 22, and 23 of the Landlords' evidence is consistent with garbage that accumulates while living in a rental unit, which corroborates the version of events provided by the Landlord. In the absence of any other logical explanation for the presence of that garbage at the end of the tenancy, I find it was left behind by the Tenants. I therefore find that the Landlords are entitled to compensation for time spent cleaning the rental unit and for the cost of cleaning supplies, in the amount of \$20.91.

On the basis of the undisputed evidence I find that during the Spring of 2011 the Landlords paid to have garbage removed from the yard of the rental unit that was present at the start of the tenancy. I therefore find that it is reasonable to conclude that any garbage that accumulated in the yard after the Spring of 2011 was left there by the Tenants, with the exception of the door and two windows both parties agree were left after a renovation.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report that was completed at the start of the tenancy indicates that the storage shed was in "fair" condition when the report was completed on November 29, 2010. As this report does not indicate there was garbage in the shed at the start of the tenancy, I must conclude there was no garbage in the shed at the start of the tenancy.

In determining that there was no garbage in the shed at the start of the tenancy I placed no weight on the Tenant's testimony that they did not inspect the shed at the start of the tenancy so the garbage in the shed was not noted on the condition inspection report. I find the Tenant's testimony that the shed was not inspected is clearly refuted by the fact the condition inspection report clearly indicates the shed was in "fair" condition at the start of the tenancy.

As the evidence shows that there was no garbage in the shed at the start of the tenancy I must conclude that the garbage present in and beside the shed at the end of the tenancy was left by the Tenants. I therefore find that the Landlords are entitled to compensation for the time he spent disposing of the garbage left on the residential property and disposal costs.

On the basis of the undisputed evidence that two windows and a door were left on the property after a renovation, I find that the Tenants are not obligated to pay for disposing of those items. On the basis of the testimony of the Tenant and in the absence of evidence to the contrary I find that after the Spring of 2011 they found a carpet buried in the ground. I therefore find that the Tenants are not obligated to pay for disposing of this item.

The evidence shows that the Landlords paid \$575.00 to dispose of garbage at the end of the tenancy, which included items the Tenants were not obligated to discard. I find it reasonable to reduce the disposal costs by \$50.00 to reflect the cost of disposing of those items and I award the Landlords \$525.00 for the cost of disposing of garbage left by the Tenants.

I find that the Landlords are entitled to compensation for the 12 hours spent cleaning the unit and disposing of garbage and I find the claim of \$180.00 for his time is reasonable. I do not find it necessary to reduce this claim to reflect the time he spent disposing of the windows and door, as that would not have taken any significant amount of time.

I have reviewed the decision relating to the previous dispute resolution proceedings at which the Tenant believes the Landlords were awarded compensation for disposal fees and I have concluded that disposal fees were not considered at those proceedings. The decision from those proceedings indicates that the Landlord submitted a Monetary

Order Worksheet that increased the Landlords' original monetary claim to include a claim of \$575.00 for disposal costs. The Arbitrator adjudicating that matter did not allow the Landlord to increase the amount of the claim to include the \$575.00 claim for disposal costs, however, and she did not consider the Landlord's claim for disposal costs. As the claim for disposal costs was not considered at previous proceedings, I find that I have an obligation to consider that claim at these proceedings.

On the basis of the undisputed evidence I find that the Tenants painted three rooms in the rental unit, with permission from the Landlord who paid for the cost of the paint. I find that the Landlords submitted insufficient evidence to establish that permission to paint the rental unit was contingent on the Landlords approving the colours the unit would be painted. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an email or other form of written communication, that corroborates the Landlord's testimony that colours needed to be approved or that refutes the Tenant's testimony that the Landlords did not ask them to approve colours. As the Landlords have failed to establish that the Tenants were required to approve paint colours, I dismiss the Landlords' application for painting costs.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$775.91, which includes \$20.91 in cleaning supplies; \$525.00 in disposal costs; \$180.00 for time cleaning the unit; and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlords a monetary Order for the amount \$775.91. 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: June 29, 2016

Residential Tenancy Branch

