



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, OLC, FF

Introduction:

This hearing was convened in response to cross applications.

On November 09, 2015 the Landlord filed an Application for Dispute Resolution in which the Landlord applied to retain the security deposit, for a monetary Order for damage to the rental unit, for a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that sometime in November of 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 11, 2016 the Tenants filed an Application for Dispute Resolution in which the Tenants applied the return of the security deposit, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant with the initials "D.M." stated that on January 15, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted to the Residential Tenancy Branch on January 19, 2016 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 17, 2016 the Landlord submitted nine photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on June 16, 2016. The Tenants acknowledged receiving this evidence on June 18, 2016 and it was accepted for 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 #1

In the “Details of Dispute” section of the Application for Dispute Resolution the Landlord makes reference to:

- the Tenants failing to vacate the rental unit by October 31, 2015 at 1:00 p.m.;
- paint being spilled “throughout house”;
- mail key not being returned; and
- new tenant being unable to move into the unit until November 04, 2015.

There is nothing in the Application for Dispute Resolution to indicate the Landlord is seeking financial compensation for any of the aforementioned issues. At the hearing the Landlord confirmed that he is not seeking financial compensation for these issues. As the Landlord has not sought financial compensation for these issues, neither party was permitted to address these issues at the hearing.

Preliminary Matter #2

In the “Details of Dispute” section of the Application for Dispute Resolution the Landlord makes no reference to a claim for compensation for missing or damaged furniture, although the Landlord refers to missing/damaged furniture in his evidence, which the Landlord estimates was worth \$1,279.00.

The Landlord was advised that a claim for compensation for missing and/or damaged furniture would not be considered at these proceedings. These claims are not being considered at these proceedings, pursuant to section 59(5)(a) of the *Act*, because the Landlord’s Application for Dispute Resolution did not provide sufficient particulars of this claim, as is required by section 59(2)(b) of the *Act*.

In reaching this conclusion I was strongly influenced by the absence of any reference to this claim on the Application for Dispute Resolution. Although the Landlord refers to damage to furniture in his evidence package, the amount of the alleged damage to the furniture far exceeds the total amount of the Landlord’s claim when it is combined with the claim for cleaning costs.

I find that proceeding with the Landlord’s claim for damaged/missing furniture at this hearing would be prejudicial to the Tenants, as the Landlord has not clearly informed the Tenants that he is seeking compensation for damaged/missing furniture.

Issue(s) to be Decided:

Is the Landlord entitled to retain the security deposit in compensation for damage to the rental unit or should it be returned to the Tenants?

Background and Evidence:

The Landlord and the Tenants agree that:

- this tenancy began on April 01, 2015, although one of the Tenants moved into the unit on March 27, 2015;
- a security deposit of \$800.00 was paid;
- the rental unit was jointly inspected in March of 2015, but the Landlord did not complete a condition inspection report at the start of the tenancy;
- this tenancy ended on October 31, 2015;
- the Landlord did not complete a condition inspection report at the end of the tenancy;
- the Tenants provided a forwarding address, in writing, on November 10, 2015;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The Landlord is seeking compensation for cleaning the rental unit, in the amount of \$631.27. This claim includes:

- compensation, in the amount of \$490.00, for the 14 hours the Landlord stated he and his girlfriend spent cleaning the unit;
- \$60.00 for disposing on garbage, for which the Landlord submitted receipts;
- \$30.00 for renting a carpet cleaner from the Landlord's mother, for which he submitted a receipt;
- \$51.27 for cleaning supplies, for which the Landlord submitted a receipt.

The Landlord stated that the rental unit was not left in clean condition at the end of the tenancy; that he had to clean the kitchen, the bathroom, the walls, and the floor; and that he had to dispose of a large amount of property that was left outside the house as there was too much to be disposed of by leaving it for roadside collection.

The Tenant with the initials "D.M." stated that the rental unit was left in reasonably clean condition at the end of the tenancy. He stated that the kitchen, the bathroom, and all the floors were cleaned prior to vacating the rental unit. He stated that the Tenants did leave garbage outside of the house, some of which was placed in the garbage can and some of which was placed beside the garbage can. He stated that the Tenants intended to move the garbage to the curb when curbside garbage was scheduled to be

picked up later in the month, but this was not done because the Landlord informed him that he had disposed of it.

The Landlord submitted two photographs of the interior of the fridge, which show the fridge needed to be wiped, which he stated were taken during the cleaning process. The Tenant with the initials "D.M." stated that he did not personally clean the fridge and that the photographs could be representative of the condition of the fridge at the end of the tenancy.

The Landlord submitted one photograph of crumbs on the floor beside the fridge. The Tenant with the initials "D.M." stated that he does not recall seeing crumbs on the floor at the end of the tenancy.

The Landlord submitted a letter from a neighbour, dated November 22, 2015, in which the author declared that he viewed the rental unit on November 01, 2015 and that "it was clear the residence had not been cleaned"; "the kitchen was of particular disgust as it was exceedingly filthy"; and "there was a dirty fridge full of food". The Tenants made no response to this letter.

The Landlord submitted an undated letter from the current occupants of the rental unit, in which they declared that the rental unit had not been cleaned when they moved in. The Tenants made no response to this letter.

The Landlord is seeking compensation, in the amount of \$45.05, for replacing lightbulbs. The Landlord stated that he had to replace five lightbulbs that burned out during the tenancy. The Landlord submitted a receipt that shows he purchased 13 lightbulbs for \$40.22 plus tax of \$4.42, which equals \$44.64.

The Tenant with the initials "D.M." agreed that five lightbulbs were burned out at the end of the tenancy but were not replaced as the Tenants believed it was the Landlord's responsibility.

Analysis:

Section 23(4) of the *Act* stipulates that a landlord must complete a condition inspection report at the start of the tenancy. As the Landlord did not complete a condition inspection report at any time during this tenancy, I find that he did not comply with section 23(4) of the *Act*.

Section 24(2)(c) 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 comply with section 23(4) of the *Act*. As I have concluded that the Landlord failed to comply with section 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, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage 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 Tenants.

In cases where both the landlord's right to retain and the tenant's right to the return of a security deposit have been extinguished, the party who breached their obligation first will bear the loss. As the Landlord did not complete the condition inspection report at the start of the tenancy in these circumstances, the Tenant would not extinguish his right to the return of the security deposit even if he did not participate in a scheduled inspection at the end of the tenancy.

Section 37(2) of the *Act* stipulates that at the end of the tenancy a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I favour the testimony of the Landlord, who stated that the rental unit required cleaning at the end of the tenancy, over the testimony of the Tenant with the initials "D.M.", who stated that the rental unit was left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the letter from a neighbour, who is a seemingly unbiased party, who clearly expressed his opinion that the rental unit had not been cleaned.

In determining that the rental unit required cleaning at the end of the tenancy I was further influenced by the letter from the current occupants, who are also seemingly unbiased parties, who corroborated the Landlord's testimony that cleaning was required.

As the Tenants breached section 37(2) of the *Act* when they did not leave the rental unit in reasonably clean condition, I find that the Tenants are obligated to compensate the Landlord for the cost of cleaning the rental unit, which includes \$60.00 for disposal costs; \$30.00 for renting a carpet cleaner, and \$51.27 for cleaning supplies. I also find that the Tenants must compensate the Landlord for the 14 hours he and his girlfriend spent cleaning the rental unit, at an hourly rate of \$25.00, which is \$350.00. I find that compensation \$25.00 per hour for labour of this nature is reasonable.

Residential Tenancy Branch Policy Guideline 1, with which I concur, stipulates that Tenants are responsible for replacing lightbulbs that burn out during the tenancy. I find that the Tenants breached section 37(2) of the *Act* when they did not replace five lightbulbs that burned out during the tenancy and that the Tenants are obligated to compensate the Landlord for the cost of replacing five bulbs.

As the evidence shows that the Landlord paid \$44.64 to purchase 13 lightbulbs for \$40.22 plus tax of \$4.42, which equals \$44.64. I therefore find that the Landlord is entitled to 5/13 of \$44.64 for replacing the lightbulbs, which is \$17.17.

I find that the Application for Dispute Resolution filed by the Landlord and the Application for Dispute Resolution filed by the Tenants both have merit. I therefore find that each party is responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion:

The Tenants have established a monetary claim of \$1,600.00, which is double the security deposit.

The Landlord has established a monetary claim of \$508.44, which includes \$491.27 for cleaning the rental unit and \$17.17 for replacing five lightbulbs.

After offsetting the two monetary claims I find that the Landlord owes the Tenants \$1,091.56 and I am granting the Tenants a monetary Order in that amount. In the event 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: June 27, 2016

Residential Tenancy Branch