



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF, O

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

The Landlord stated that on December 19, 2015 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on January 07, 2016 were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord cited a tracking number that corroborates this statement. The Landlord stated that the service address for the Tenant was provided to her by the building concierge, who received it from the Tenant.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

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

Is the Landlord entitled to compensation for lost revenue?

Is the Landlord entitled to keep all or part of the security deposit/pet damage deposit?

Background and Evidence

The Landlord stated that:

- the tenancy began on August 01, 2013;
- the tenancy ended on July 31, 2015;
- the Tenant agreed to pay monthly rent of \$5,300.00 by the first day of each month;
- the Tenant paid a security deposit of \$2,650.00 and a pet damage deposit of \$1,000.00;
- a condition inspection report was completed on July 21, 2013;
- she scheduled two times to conduct a final inspection of the rental unit, via email;
- the Tenant did not attend either time scheduled for the final inspection; and
- she did not provide the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection (RTB #22).

The Landlord is seeking compensation, in the amount of \$7,948.50, for damage to the rental unit. The Landlord submitted an invoice for \$7,948.50 marked "paid" for various repairs.

The invoice for \$7,948.50 included a charge of \$380.00, for repairing the weather guard on the patio door. The Landlord stated that the rubber on the bottom of the door was detached from the door, although she does not know how or why it came loose. The Landlord did not provide photographs of the damaged door.

The invoice for \$7,948.50 included a charge of \$150.00, for repairing the steam shower switch. The Landlord stated that the switch stopped working during the tenancy and shows no sign of exterior damage.

The invoice for \$7,948.50 included a charge of \$1,650.00, to repair two doors. The Landlord stated that the doors were new at the start of the tenancy and that they were damaged by the Tenant's dog during the tenancy. The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show the damage to the doors.

The invoice for \$7,948.50 included a charge of \$200.00, to repair a door that was damaged by water. The Landlord stated that the door was new at the start of the tenancy and was damaged when it was exposed to water during the tenancy.

The invoice for \$7,948.50 included a charge of \$2,200.00, to repair the cabinets in the master bathroom. The Landlord stated that the cabinets were new at the start of the tenancy and were damaged when they were exposed to water during the tenancy. The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show the damage to the cabinets.

The invoice for \$7,948.50 included a charge of \$1,800.00, for cleaning the limestone. The Landlord stated that the shower and kitchen counters were made of limestone, which was new at the start of the tenancy. She stated that the limestone and counters were stained during the tenancy. The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show the damage to the surface of the counters and shower stall.

The invoice for \$7,948.50 included a charge of \$350.00, for repairing the walls in the rental unit. The Landlord stated that the walls were not damaged at the start of the tenancy but were damaged in several locations at the end of the tenancy. The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show the damage to the walls.

The invoice for \$7,948.50 included a charge of \$260.00, for repairing closet shelves. The Landlord stated that the shelves were not damaged at the start of the tenancy but were damaged at the end of the tenancy.

The invoice for \$7,948.50 included a charge of \$50.00, for repairing a toilet handle. The Landlord stated that the handle was not damaged at the start of the tenancy but was missing at the end of the tenancy.

The invoice for \$7,948.50 included a charge of \$530.00, for disposing of garbage. The Landlord stated that this was the cost of disposing of construction debris that was directly related to the aforementioned repairs.

The Landlord is claiming compensation of \$321.65 for repairing a garage door. The Landlord stated that the Tenant reported a problem with the garage door in June of 2014 and it was repaired shortly thereafter. The Landlord submitted an invoice for the door, marked paid, which indicates a circuit board was replaced and the door was lubricated.

The Landlord is claiming compensation of \$7,000.00 for lost revenue. She stated that:

- she entered into a new tenancy agreement with a third party;
- the new tenancy was to begin on August 04, 2015 and was to end on August 31, 2015;
- the new tenant agreed to pay rent of \$7,000.00 for this period of less than one month; and
- the new tenant was unable to move into the rental unit because the Tenant did not repair the damage to the rental unit.

The Landlord submitted a copy of a tenancy agreement with the third party who was to move into the rental unit on August 04, 2015, however I note that the agreement is signed August 23, 2015.

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.

Section 37(2)(a) of the *Act* requires a tenant to leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear, at the end of the tenancy. Section 32(3) of the *Act* stipulates that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 32(4) of the *Act* stipulates that a tenant is not required to make repairs for reasonable wear and tear.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is obligated to repair the weather guard at the bottom of the patio door and I dismiss her claim of \$380.00 for this repair. In reaching this conclusion I was heavily influenced by the Landlord's inability to explain how the weather guard became detached and by the absence of a photograph of the damage, which might help me determine whether or not the damage was the result of normal wear and tear. I find it entirely possible that the weather guard became detached through normal use and was not the direct result of the actions or neglect of the Tenant.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is obligated to repair the steam shower switch and I dismiss her claim of \$150.00 for this repair. In the absence of evidence of external force being applied to the switch, I find it entirely likely that the switch was damaged through normal wear and tear or because of a mechanical fault in the switch, for which the Tenant is not responsible.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the doors that were damaged during the

tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the doors, which was \$1,850.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the bathroom cabinets that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the cabinets, which was \$2,200.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to leave the kitchen counter and shower in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the cost of cleaning those surfaces, which was \$1,800.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the damage to the walls that occurred during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the walls, which was \$350.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the shelves that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the shelves, which was \$260.00.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2)(a) of the *Act* when the Tenant failed to repair the toilet handle that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of repairing the toilet, which was \$50.00.

I find that the Landlord is entitled to recover the \$530.00 paid to dispose of construction debris, as I find the Landlord would not have incurred this expense if the Tenant had complied with his obligation to leave the rental unit in good condition.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was obligated to repair the garage door and I dismiss her claim of \$321.65 for this repair. On the basis of the information on the invoice submitted in evidence it appears that the garage door malfunctioned due to an electronic problem, which is not related to the actions or neglect of the Tenant.

On the basis of the photographs submitted I find that the damage to the rental unit was largely cosmetic and that it did not prevent the third party from moving into the rental unit. I find that between August 01, 2016 and August 03, 2016, with reasonable diligence, the Landlord could have rendered the rental unit suitable for occupation for a new tenant, although I accept that the new occupant may have been inconvenienced by a few repairs during the tenancy. As I am not satisfied that the new occupant was prevented from moving into the rental unit because of the condition of the unit at the end of the tenancy, I dismiss the Landlord's claim for lost revenue.

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 \$7,090.00, which is comprised of \$7,040.00 for repairing damage to the unit 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 \$2,650.00 and a pet damage 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 \$3,440.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: July 14, 2016

Residential Tenancy Branch