



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that on December 31, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on January 29, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant submitted to the Residential Tenancy Branch on February 01, 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 July 11, 2016 the Landlord submitted 67 pages of evidence and a USB device to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on July 11, 2016. The Tenant stated that she located this evidence outside her door. As the evidence was received by the Tenant 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. They were not permitted to testify about issues not in dispute at these proceedings.

Preliminary Matter

The Tenant named a company as a Respondent in her Application for Dispute Resolution. A representative of this company attended the hearing and remained until it was determined that he was not a party to the tenancy agreement.

The Tenant and the representative of this company agreed that the Tenant and the company named as a Respondent in her Application for Dispute Resolution do not have a tenancy agreement.

With the consent of the Tenant and the agent for the company named as a Respondent in the Tenant's Application for Dispute Resolution, the Application was amended to remove this company as a named Respondent.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to compensation for unpaid utilities?

Is the Tenant entitled to compensation for the manner in which this tenancy ended?

What should happen with the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which began on August 01, 2015 and ended on September 30, 2015;
- only the Landlord and the Tenant were named on the tenancy agreement;
- the Landlord was aware that a second party would be occupying the rental unit with the Tenant;
- the Tenant agreed to pay rent of \$1,500.00 by the first day of each month;
- the Tenant paid a security deposit of \$750.00;
- a condition inspection report was completed on July 29, 2015, a copy of which was submitted in evidence;
- they mutually agreed to continue with the tenancy after September 30, 2015;
- after considerable discussion via text message and telephone they agreed the Tenant would vacate the rental unit on December 15, 2015;
- they did not sign a mutual agreement to end the tenancy on December 15, 2015;
- neither party gave written notice to end the tenancy;
- the Tenant vacated the rental unit on December 14, 2015;

- a condition inspection report was completed on December 14, 2015, copies of which were submitted by both parties;
- the Tenant did not sign the condition inspection report that was completed on December 14, 2015;
- the Landlord added information to the condition inspection report after the Tenant left the unit on December 14, 2015; and
- on December 17, 2015 the Tenant mailed her forwarding address to the Landlord.

The Landlord stated that she did not enter into an oral or a written tenancy agreement with the male named as an Applicant on the Tenant's Application for Dispute Resolution. The Tenant stated that the male was named on the Application for Tenancy; that the Landlord knew he would be living in the rental unit; and she cannot recall if there was an agreement to include him as a Tenant.

The Tenant stated that she did not sign the condition inspection report that was completed on December 14, 2015 because the Landlord would not allow her to sign it because she wanted to inspect for additional damage. The Landlord stated that the Tenant did not sign the report because she did not agree with the content of the report.

The Tenant is seeking compensation of \$760.00 for moving costs. The Tenant contends that she is entitled to compensation for "moving" costs because the Landlord did not give her proper notice to end the tenancy.

The Tenant is seeking compensation of \$1,500.00, which is the equivalent of one month's rent, which is the amount she would have been entitled to if the Landlord had served her with a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant is seeking the return of her security deposit, in part, because she believes the rental unit was left in good condition and, in part, because the Landlord did not complete a final condition inspection report in accordance with the *Act*.

The Landlord is seeking compensation for hydro charges, in the amount of \$145.34, and internet upgrade costs, in the amount of \$52.50. The Tenant acknowledges that she owes these amounts and does not dispute these claims.

The Landlord is seeking compensation, in the amount of \$150.00, for cleaning the rental unit.

The Landlord stated that the rental unit required cleaning at the end of the tenancy. She submitted digital images of the rental unit which she stated were all taken on December 14, 2015 and two cleaning invoices, dated December 15, 2015 and December 17, 2015 for \$75.00 each.

The Tenant contends that the rental unit was left in reasonably clean condition. She stated that not all of the digital images represent the condition of the rental unit at the end of the tenancy, as some were taken after December 14, 2015.

The Landlord is seeking compensation for replacing the shower curtain.

The Landlord stated that the shower curtain was in good condition at the start of the tenancy and that it was dirty and stained at the end of the tenancy. She submitted a video recording of the rental unit which indicates it was recorded on December 14, 2015, which shows the curtain is stained/dirty. The Landlord submitted a receipt that shows she paid \$16.99 plus tax for a new shower curtain.

The Tenant stated that the video recording is a fair representation of the condition of the shower curtain at the end of the tenancy and she does not recall the shower curtain being dirty at the start of the tenancy.

The Landlord is seeking compensation of \$60.00 for 3 "feather decorative balls"

The Landlord stated that the decorative balls were covered with a black film at the end of the tenancy. She submitted a digital image of the decorative balls which indicates it was taken on December 15, 2015.

The Tenant stated that the decorative balls were not unreasonably dirty at the end of the tenancy.

The Landlord is seeking compensation for replacing a frying pan.

The Landlord stated that the frying pan was burned during the tenancy and could no longer be used. She submitted a digital image of the frying pan which indicates it was taken on December 20, 2015 and an invoice to show that she paid \$14.97 to replace the frying pan.

The Tenant stated that she never used the frying pan and it was not damaged when she vacated the rental unit on December 14, 2015.

The Landlord is seeking compensation for replacing a toaster oven.

The Landlord stated that the toaster oven was badly burned and was not working at the end of the tenancy. She submitted 2 digital images of the toaster oven which indicates it was taken on December 15, 2015 and an invoice to show that she paid \$65.49 to replace the oven.

The Tenant stated that the toaster oven was functioning properly at the end of the tenancy.

The Landlord is seeking compensation of \$5.00 for replacing stove element covers.

The Landlord stated that the covers were damaged during the tenancy and that she disposed of them. She stated that she did not submit photographs of the damaged items or receipts/estimates for replacing them.

The Tenant stated that she did not use the covers for the stove elements and they were not damaged at the end of the tenancy.

The Landlord is seeking compensation for three burned out light bulbs.

The Landlord stated that the three light bulbs that were burned out at the end of the tenancy were working at the start of the tenancy. The Landlord submitted a receipt for three light bulbs, in the amount of \$8.99 plus tax.

The Tenant stated that there were three light bulbs burned out at the end of the tenancy and she cannot recall if they were working at the start of the tenancy.

The Landlord is seeking compensation for replacing a chair.

The Landlord stated that the chair was in good condition at the start of the tenancy and that it was damaged at the end of the tenancy. The Landlord submitted a receipt for replacing the chair, in the amount of \$447.99 plus tax.

The Tenant stated that there was wear and tear on the chair when the tenancy began and there was wear and tear on the chair at the end of the tenancy.

The Landlord stated that digital image 3014, which was taken in May of 2015, shows the condition of the chair at the start of the tenancy. The Landlord stated that digital images 5956 and 5957, which were taken on December 30, 2015, show the condition of the chair at the end of the tenancy. The Landlord stated that the video recording 5744, which was recorded on December 14, 2015, shows the condition of the chair at the end of the tenancy.

Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a tenancy agreement.

As the Landlord does not acknowledge entering into an oral or a written tenancy agreement with the male named as an Applicant on the Tenant's Application for Dispute Resolution and there is no concrete evidence that those parties entered into a tenancy agreement, I cannot conclude that the male had a tenancy agreement with the Landlord. I will therefore refer to him as an occupant in this decision, as there is no dispute that he was living in the rental unit.

Section 44(1)(a) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46,

47, 48, 49, 49.1, and 50 of the *Act*. The evidence shows that neither party gave proper written notice to end this tenancy in accordance with these sections and I therefore find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. Although this tenancy agreement required the Tenant to move out on September 30, 2015, I find that the parties mutually agreed to continue the tenancy after that date. I therefore find that this tenancy did not end on September 30, 2015 pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no clear evidence that both parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Residential Tenancy Act (Act)* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. I find that this tenancy ended when the Tenant vacated the rental unit on December 14, 2015.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

As the Tenant was not served with proper notice to end this tenancy, I find that she was not obligated to vacate the rental unit on December 14, 2015. Had the Tenant not wanted to vacate the rental unit on that date she had the right to inform the Landlord she intended to remain in the unit until such time as the Landlord ended the tenancy in accordance with the *Act*. As the Tenant was not obligated to vacate the rental unit on December 14, 2015, I dismiss her claim for any costs associated to moving.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the undisputed evidence is that the Tenant was not served with a Two Month Notice to End Tenancy pursuant to section 49 of the *Act*, I cannot conclude that she is entitled to compensation pursuant to section 51(1) of the *Act*. I therefore dismiss the Tenant's application for compensation of \$1,500.00.

Section 36(2)(a) of the *Act* stipulates that a 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 35 of the *Act*. Even if I concluded that the Landlord did not complete a final inspection report in accordance with section 35 of the *Act* I would find that she still had the right to claim against the security deposit for unpaid utilities, which

is different than a claim for damage. As the Landlord has made a claim for unpaid utilities, I find that she has the right to make a claim against the security deposit.

As the Tenant agrees that she owes \$145.34 for hydro and \$52.50 for utilities, I find that the Landlord is entitled to compensation in the amount of \$197.84.

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* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

On the basis of the video evidence submitted by the Landlord, which indicates the video was taken on December 14, 2015, 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, which includes the shower curtain. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$150.00 for labour and \$18.70 for replacing the shower curtain.

On the basis of the digital image that was submitted in evidence I find that the feather decorative balls were left in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is not entitled to compensation for cleaning or replacing the balls and I dismiss her claim for \$60.00.

I note that the *Act* only requires a tenant to leave a rental unit in reasonably clean condition, which is not necessarily the standard of the Arbitrator, the Landlord or the Tenant.

Even if I accepted the Landlord's evidence that the digital image of the frying pan was an accurate representation of the condition of the frying pan at the end of the tenancy, I would dismiss her claim for compensation for replacing the pan. While I accept that the frying pan appears used, I cannot conclude that the pan was no longer functional. I find that the damage depicted in the image constitutes reasonable wear and tear, which the Tenant is not required to repair. I therefore dismiss the Landlord's claim for replacing the frying pan.

I find that the Landlord submitted insufficient evidence to show that the toaster oven was not working at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that it did not work or that refutes the Tenant's testimony that it did work. Although the Landlord submitted a digital image of the toaster oven, which appears to show that food

was burned inside the oven, I am not satisfied on the basis of that image that the damage to the oven exceeds “normal wear and tear”. I therefore dismiss the Landlord’s claim for replacing the toaster oven.

I find that the Landlord submitted insufficient evidence to show that the stove element covers were damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord’s testimony that they were damaged at the end of the tenancy or that refutes the Tenant’s testimony that they were not damaged. I therefore dismiss the Landlord’s claim for replacing the covers.

Residential Tenancy Branch Policy Guideline #1, with which I concur, suggests that a tenant must replace light bulbs that burn out during the tenancy. As the Landlord recalls the three light bulbs that were burned out at the end of the tenancy were working at the start of the tenancy and the Tenant cannot recall if they were working, I find that they burned out during the tenancy. I therefore find that the Tenant was obligated to replace the light bulbs at the end of the tenancy, pursuant to section 37(2), and I find the Landlord is entitled to the cost of replacing them, which was \$8.99 plus tax of \$1.08.

On the basis of the video recording 5744 I found that there is damage to a chair in the rental unit that, in my view, exceeds normal wear and tear. I find, however, that the Landlord submitted insufficient evidence to show that the chair was not damaged at the start of the tenancy.

In determining that there is insufficient evidence to show that the chair was in good condition at the start of the tenancy I was heavily influenced by the fact the condition of the chair is not mentioned in the condition inspection report that was completed on July 29, 2015. In determining that there is insufficient evidence to show that the chair was in good condition at the start of the tenancy I placed no weight on digital image 3014, which was taken in May of 2015, as that image is taken from a distance and does not detail the area of the chair that was allegedly damaged during the tenancy.

As the Landlord has submitted insufficient evidence to show that the chair was in good condition at the start of the tenancy, I cannot conclude that it was damaged during the tenancy. I therefore find that the Tenant is not obligated to repair the chair and I dismiss the Landlord’s claim for replacing the chair.

During the hearing the Landlord withdrew her claim for cleaning the drapes and for cleaning two blankets.

The Landlord has established a monetary claim, in the amount of \$376.61, which is comprised of \$197.84 in unpaid utilities, \$168.70 for cleaning/replacing the shower curtain; \$10.07 for replacing light bulbs; and \$50.00 in compensation for the fee paid to file an Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to retain this amount from the Tenant’s security deposit in full satisfaction of the monetary claim.

As the Landlord collected a security deposit of \$750.00 and she has only established a right to retain \$376.61, I find that she must return the remaining \$373.39.

I find that the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution both have some merit. I therefore find that they are each responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I grant the Tenant a monetary Order for the amount \$373.39, which is the amount of the security deposit the Landlord is not entitled to retain. As the Tenant has not established that the male named in her Application for Dispute Resolution entered into a tenancy agreement with the Landlord, the monetary Order only names the Tenant.

In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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 28, 2016

Residential Tenancy Branch