



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, 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 unpaid rent or utilities, for a monetary Order for damage, to keep all or part of the security deposit, "other", and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 09, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were personally served to the Tenant by a process server. The Landlord submitted an Affidavit of Personal Service that corroborates this testimony. 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.

On May 10, 2016 the Landlord submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch, in which he increased the amount of his monetary claim to \$12,506.20. The Landlord stated that this Amendment was mailed, via registered mail, to the mailing address for the Tenant that was provided to the Landlord by the process server. In the absence of evidence to the contrary I find that this document has been served to the Tenant in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent or utilities, for costs associated to the end of the tenancy, and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the Tenant was living in the rental unit before the Landlord purchased the unit in April of 2014;
- the Landlord and the Tenant subsequently entered into a written tenancy agreement;
- the Tenant agreed to pay monthly rent of \$1,525.00 by the first day of each month;
- the Tenant paid a security deposit of \$750.00 to his previous landlord, which was transferred to the current Landlord;
- on June 09, 2015 the Tenant gave the Landlord notice that he intended to vacate the rental unit on July 09, 2015;
- the Tenant vacated the rental unit on July 09, 2015;
- the Tenant did not provide the Landlord with a forwarding address at the end of the tenancy;
- the Tenant still owes \$1,475.00 in rent for May of 2015; and
- no rent was paid for June or July of 2015.

The Landlord is seeking to recover the unpaid rent from May, June, and July of 2015.

The Landlord is seeking compensation, in the amount of \$3,302.04, for replacing the carpet in the rental unit. The Landlord stated that the carpet was badly stained with dog urine and had been chewed by the Tenant's dog in several places. The Landlord submitted photographs of the damaged carpet.

The Landlord submitted an invoice to show that it will cost \$3,302.04 to replace the carpet. The Landlord stated that the carpet has not yet been replaced, as he does not have the funds to replace the carpet. He stated that the carpet was new in 2006.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the carpet. The Landlord stated that he cleaned the carpet because he could not afford to replace the carpet before the next tenant moved into the unit. He stated that he paid \$100.00 in cash to clean the carpet.

The Landlord is seeking compensation, in the amount of \$69.00, for cleaning the rental unit. The Landlord stated that the rental unit required cleaning at the end of the tenancy. He submitted a receipt to show that he paid \$69.00 to clean the unit.

The Landlord is seeking compensation, in the amount of \$1,070.48 for moving the Tenant's personal property out of the rental unit and \$593.40 for storing that property. The Landlord stated that the Tenant left a small amount of furniture in the rental unit, some electronics, and seven boxes of personal property in the rental unit at the end of the tenancy, which he estimates was worth \$800.00.

The Landlord submitted an estimate of \$1,070.48 for moving the Tenant's personal property to a storage unit. He stated that he spent approximately 30 hours moving the property himself. The Landlord submitted a receipt for storing the property, in the amount of \$593.40.

The Landlord stated that he has disposed of the Tenant's personal property because the Tenant did not contact him in regards to recovering the property. He is seeking compensation of \$93.30 for disposing of the property. He submitted three receipts to show that he paid \$79.00 in disposal fees.

The Landlord is seeking compensation, in the amount of \$110.00, for replacing two electronic fobs that provide access to the residential complex and garage. The Landlord stated that the fobs were not returned at the end of the tenancy. He submitted a receipt to show that he paid \$110.00 to replace the fobs.

The Landlord is seeking compensation of \$67.86 for replacing a mail box key and \$75.00 for replacing the front door locks. The Landlord stated that the keys were not returned at the end of the tenancy. He submitted a receipt to show that he paid \$17.87 to replace the mail box key. He stated that he paid \$75.00 in cash to replace the front door lock.

The Landlord is seeking compensation, in the amount of \$267.80, for replacing a "food waste disposer. The Landlord stated that the appliance did not work at the end of the tenancy, although he does not know why. He stated that the appliance was new in 2006.

The Landlord is seeking compensation, in the amount of \$279.99, for replacing a microwave. The Landlord stated that the microwave door would not open and that it appears someone has hammered the mechanism that opens the appliance. He stated that the microwave was new in 2006. The Landlord submitted a receipt to show that he paid \$279.99 for a new microwave.

The Landlord is seeking compensation for utilities, in the amount of \$280.07. The Landlord stated that the Tenant agreed to pay water charges incurred during the tenancy. The tenancy agreement submitted in evidence corroborates this testimony.

The Landlord submitted a water bill for the period between January 01, 2016 and December 31, 2016, in the amount of \$399.00. The Landlord stated that he is seeking compensation for a pro-rated portion of this bill.

The Landlord is seeking compensation for the cost of locating the Tenant. The Landlord stated this cost was incurred because the Tenant did not provide him with a forwarding address at the end of the tenancy. The Landlord submitted a receipt from a process serving company that indicates he paid \$400.00 to locate the Tenant and to serve documents to him.

The Landlord is seeking compensation for lost revenue for August of 2015. In support of this claim the Landlord stated that:

- the rental unit was left in extremely poor condition at the end of the tenancy;
- the Tenant was not responding to his electronic communications so he was unable to confirm that the Tenant had fully vacated the rental unit by July 09, 2015;
- on July 21, 2016 he was able to confirm that the rental unit had been vacated;
- he did not have time to prepare the rental unit for a new tenant for August 01, 2015;
- he started advertising the rental unit sometime in the middle of August of 2015; and
- he was able to re-rent the unit for September 01, 2015.

The Landlord is seeking compensation for interest of \$541.78 for the money the entire amount of his initial claim of \$10,835.58.

Analysis

On the basis of the undisputed evidence I find that the Tenant has not paid \$1,475.00 in rent that was due on May 01, 2015; \$1,525.00 that was due on June 01, 2015; and \$1,525.00 that was due on July 01, 2015. Section 26 of the *Act* requires a tenant to pay rent when it is due. I therefore find that the Tenant must pay \$4,525.00 to the Landlord for unpaid rent.

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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpet clean and undamaged.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the

replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet was new in 2006 and was, therefore, approximately nine years old when this tenancy ended in July of 2015. I therefore find that the carpet had depreciated by 90% by the end of the tenancy and that the Landlord is entitled to compensation for 10% of the cost of replacing the carpet, which will be \$330.20.

On the basis of the undisputed evidence I find that the Landlord paid \$100.00 in cash to clean the carpet and I find that he is entitled to recover that expense.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the \$69.00 he paid to clean the unit.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not remove all of his personal property from the rental unit at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of storing the property, in the amount of \$593.40. I also find that the Landlord is entitled to compensation for the 30 hours he spent moving the Tenant's personal property, in the amount of \$600.00. I find compensation of \$20.00 per hour is reasonable for labour of this nature.

I also find that the Landlord is entitled to compensation for the \$79.00 he paid to dispose of the Tenant's property.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not return the electronic access fobs and all keys at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the fobs, in the amount of \$110.00; \$17.87 for replacing the mail box key; and \$75.00 for replacing the front door lock.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was obligated to repair the food waste disposer at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that establishes the food waste disposer stopped working as a result of abuse or neglect. I find it entirely possible that a food waste disposer that was approximately ten years old could have stopped working as a result of normal wear and tear. As the Tenant is not obligated to repair damage that occurs as a result of normal wear and tear, I dismiss the Landlord's claim for replacing the food waste disposer.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when he did not repair the microwave that was damaged as a result of external force during the tenancy.

The Residential Tenancy Policy Guidelines show that the life expectancy of a microwave is ten years. The evidence shows that the microwave was new in 2006 and was, therefore, approximately nine years old when this tenancy ended in July of 2015. I therefore find that the appliance had depreciated by 90% by the end of the tenancy and that the Landlord is entitled to compensation for 10% of the cost of replacing the microwave, which is \$28.00.

On the basis of the undisputed evidence I find that the Tenant was obligated to pay for water consumption used during the tenancy. I find that the Landlord has submitted insufficient evidence to establish how much he is owed for water charges and I therefore dismiss his claim for \$280.07.

The Landlord has submitted a water bill for the period between January 01, 2016 and December 31, 2016. As the Tenant did not occupy the rental unit in 2016, I find that he is not obligated to pay any portion of this bill. The Landlord has not submitted a water bill for any period prior to January 01, 2016 and has not, therefore, established how much is owed for any period prior to that date.

On the basis of the undisputed evidence I find that the Tenant did not provide the Landlord with a forwarding address at the end of the tenancy. There is nothing in the *Act* that specifically requires a tenant to provide a landlord with a forwarding address at the end of a tenancy. As I am only able to order a tenant to pay money to a landlord if the tenant breaches the *Act* or the tenancy agreement and the Tenant did not breach the *Act* or the tenancy agreement by failing to provide a forwarding address, I dismiss the Landlord's application to recover the costs of locating the Tenant.

Section 39 of the *Act* stipulates that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. This is the consequence of not providing a forwarding address. As the Landlord filed this Application for Dispute Resolution prior to having the right to retain the security deposit pursuant to section 39 of the *Act*, I must determine whether he has the right to retain the security deposit for damage and/or unpaid rent and utilities.

Although I accept that the rental unit was not left in good condition at the end of the tenancy, I find that the Landlord had ample time to ready the unit for a new tenant for August 01, 2015. Given that the Landlord took possession of the rental unit on July 21, 2015 I find that with reasonable diligence the Landlord could have removed the Tenant's property, cleaned the unit, and replaced the keys prior to August 01, 2015. I find that the microwave and food waste disposer could have been replaced after a new

tenancy began. I therefore dismiss the Landlord's claim for lost revenue for August of 2015.

I dismiss the Landlord's application for interest of \$541.78. Even if I could conclude that the Landlord is entitled to interest for any amount owing to him I would dismiss this claim, as the Landlord has submitted insufficient evidence to establish that he experienced this loss. In order to successfully prove such a claim an applicant would need to submit documentary evidence from a financial institution that establishes the party was charged, or failed to earn, interest.

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 \$6,627.47, which includes \$4,525.00 in unpaid rent; \$330.20 for replacing the carpet; \$169.00 for cleaning costs; \$593.40 for storage costs; \$79.00 for disposal fees; \$600.00 for time spent moving the Tenant's property; \$202.87 for replacing the access fobs/keys; \$28.00 for replacing the microwave; and \$100.00 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 Tenant's security deposit of \$750.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$6,552.47. In the event that 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: August 19, 2016

Residential Tenancy Branch