



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

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, and to recover the fee for filing this Application for Dispute Resolution. It is readily apparent from the information on the Application for Dispute Resolution that the Landlord is seeking compensation for unpaid rent/lost revenue, and that issue will be considered at these proceedings.

The Agent for the Landlord stated that on March 02, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord to the Residential Tenancy Branch on February 29, 2016 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were 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

The Tenant attended the hearing nine minutes after the hearing started at 2:30 p.m. Issues that had been discussed prior to his arrival were reviewed with the Tenant and he confirmed that the information provided prior to his attendance was accurate.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent/lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 16, 2015;
- on February 02, 2016 the Tenant provided written notice of his intent to vacate the rental unit on February 29, 2016;
- the rental unit was vacated on February 29, 2016;
- the Tenant agreed to pay monthly rent of \$825.00 by the first day of each month;
- the Tenant paid a security deposit of \$412.50;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy in the presence of the Tenant, although he refused to sign that report; and
- the Tenant provided a forwarding address, in writing, when the condition inspection report was completed on February 29, 2016.

The Landlord is seeking \$5.00 in rent that is still due from January of 2016. The Tenant stated that it is entirely possible that he accidentally underpaid his rent in January by \$5.00.

The Landlord is seeking \$825.00 in rent that was due on February 01, 2016, which has not been paid. The Agent for the Landlord stated that the Tenant did not provide the Landlord with a full month's notice to end the tenancy; that the rental unit was advertised in various locations in February of 2015; and that the unit was not re-rented until May 01, 2016.

The Tenant stated that he was unable to provide his written notice to end the tenancy prior to February 02, 2016 as he is a truck driver and he was working.

The Landlord is seeking compensation of \$89.25 for cleaning the carpet and \$162.50, for general cleaning. The Agent for the Landlord stated that the walls needed to be cleaned as there was kitty litter stuck on the walls; the carpet needed to be cleaned as there was cat feces on the closet floor; areas behind/under the fridge and stove needed to be cleaned as cat toys and other debris were found in that vicinity; and stains on the bathroom floor near the toilet were removed with cleaning.

The Tenant stated that the rental unit was cleaned at the end of the tenancy, although he acknowledges that there was kitty litter stuck on the wall; that they missed one small piece of cat feces, and that they did not clean behind/under the kitchen appliances. He stated that the stains near the base of the toilet could not be removed with cleaning.

The Agent for the Landlord stated that staff spent 6.5 hours cleaning the unit and that the carpets were professionally cleaned. The Landlord did not submit a receipt for carpet cleaning but a list of carpet cleaning prices from the company that cleaned the carpet was submitted.

The Landlord submitted photographs of the rental unit, which the Agent for the Landlord stated shows the areas requiring cleaning. The Tenant acknowledged that the photographs accurately reflect the condition of the rental unit at the end of the tenancy.

The Landlord is seeking compensation of \$7.50 for repairing a cupboard door. The Agent for the Landlord stated that one of the hinges on the door was bent and that she spent approximately 30 minutes replacing the hinge.

The Tenant stated that the cupboard door did not close properly when the tenancy began; that he placed a coffee can against the door to keep it closed; and that the pressure of the coffee can eventually bent the hinge. He acknowledged that there was nothing on the condition inspection report that was completed at the start of the tenancy which indicates there was a problem with this door when the tenancy began.

Analysis

On the basis of the undisputed evidence I find that the Tenant agreed to pay monthly rent of \$825.00 by the first day of each month and that he underpaid his rent by \$5.00 in January of 2016. As tenants are required to pay all of the rent when it is due, pursuant to section 26 of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay the Landlord \$5.00 in rent from January of 2016.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

To end this tenancy on February 29, 2016 in accordance with section 45 of the *Act*, the Tenant was required to give notice of his intent to vacate on, or before, January 31, 2016.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on February 02, 2016 was March 31, 2016. Therefore, I find that the notice to end tenancy that was given on February 02, 2016 effectively ended this tenancy on March 31, 2016.

As the Tenant had not properly ended this tenancy by March 01, 2016, I find that the Tenant was obligated to pay rent when it was due on March 01, 2016, pursuant to section 26 of the *Act*.

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* requires tenants to leave a rental unit reasonably clean and undamaged, apart from reasonable wear and tear, at the end of the tenancy. A rental unit must be left in reasonably clean condition, which is not necessarily the standard of the arbitrator, the landlord or the tenant.

On the basis of the testimony of the parties and the photographs submitted in 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 therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$251.75.

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 when this tenancy began does not indicate that a kitchen cupboard door was damaged at the start of the tenancy, I find that the cupboard doors were in good condition at the start of the tenancy. As both parties acknowledge that a hinge on a kitchen cupboard door was bent at the end of the tenancy, I must conclude that this damage occurred during the tenancy.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the kitchen cupboard door that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for time spent repairing the door, in the amount of \$7.50

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 \$1,189.25, which includes \$5.00 in rent for January of 2016; \$825.00 in rent for March of 2016; \$251.75 for cleaning; \$7.50 for repairing the cupboard door; 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 \$412.50 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount of \$776.75. 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: October 20, 2016

Residential Tenancy Branch

