



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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 damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. It is apparent from information provided on the Monetary Order Worksheet that the Landlord is also seeking compensation for unpaid rent.

The Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail, on May 12, 2016. The female Tenant acknowledged receipt of these documents.

On August 29, 2016 the Landlord submitted 29 pages of evidence and 13 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on August 29, 2016. The female Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On October 11, 2016 the Tenants submitted 22 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was sent to the Landlord, via registered mail, on October 11, 2016. The Landlord acknowledged receipt of all of the Tenants' evidence with the exception of the digital evidence and associated documents, page 9 of the Tenants' evidence, and page 16 of the Tenants' evidence.

The documents the Landlord acknowledged receiving from the Tenants was accepted as evidence for these proceedings. I note that the Landlord submitted a copy of page 9 of the Tenants' evidence package and a copy of page 16 of the Tenants' evidence package. Those documents were accepted as evidence on the basis of the Landlord's submission and are, therefore, available to be considered during this adjudication.

At the conclusion of the hearing the Tenants were advised that I am unable to accept their digital evidence because the Landlord did not acknowledge receiving that evidence. The Tenants declined the opportunity for an adjournment for the purposes of

re-serving that evidence to the Landlord, with the understanding that I would not consider their digital evidence during this adjudication.

Prior to declining the opportunity for an adjournment the Tenants asked whether the Landlord would acknowledge that the transcript located at pages 11 and 12 of their evidence package correctly reflects the conversation the parties had at the end of the tenancy. The Landlord stated that he does not agree it is an accurate record of their conversation. The Tenants again declined the opportunity for an adjournment after the Landlord did not agree that the transcript is accurate.

The Landlord and the Tenants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

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

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

Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants moved into the rental unit on March 01, 2015;
- the parties signed a tenancy agreement for a fixed term that ran from March 01, 2015 to February 29, 2016;
- the parties signed a second tenancy agreement for a fixed term that ran from March 01, 2016 to April 30, 2016;
- the second tenancy agreement required the Tenants to pay monthly rent of \$1,800.00 by the first day of each month;
- the Tenants paid a security deposit of \$900.00 and a key deposit of \$35.00;
- a condition inspection report was completed prior to the start of the tenancy, on February 29, 2015;
- a final condition inspection report was completed on May 01, 2016; and
- the Tenants' forwarding address was provided to the Landlord on May 01, 2016.

The Landlord is seeking compensation, in the amount of \$535.25, for repairing and painting walls in the rental unit. The Landlord submitted photographs #2, #3, and #4 which the Landlord stated shows the damage to the walls.

The male Tenant acknowledged that photographs #2, #3, and #4 fairly represent the condition of the walls at the end of the tenancy. The female Tenant stated that their furniture caused the damage in photographs #2 and #4. The male Tenant stated that the Landlord asked them not to use nails to hang art on the walls; that they used adhesive picture hangers to hang their art; that photograph #3 shows the area where the wall was damaged when the adhesive picture hangers were removed; he repaired

the damage caused by the adhesive picture hangers; and he did not have the proper colour of paint to repaint the repair shown in photograph #3.

The Landlord is seeking compensation, in the amount of \$284.51, for repairing damage to the interior of the refrigerator. The Landlord stated that two crispers and a glass shelf was damaged during the tenancy.

The female Tenant acknowledged breaking a glass shelf in the refrigerator while she was cleaning it. The male Tenant stated that the two crispers that were broken during their tenancy were glued together prior to the start of the tenancy, although he acknowledged that this damage was not noted on the condition inspection report at the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$250.00, for repairing the exterior door of the refrigerator.

The Landlord stated that there Tenants dented the door of the refrigerator, as depicted by photograph 12 submitted by the Landlord. The male Tenant stated that this door was damaged at the start of the tenancy, although he acknowledged that this damage was not noted on the condition inspection report that was completed at the start of the tenancy.

The condition inspection report that was completed on February 27, 2015, which the Tenants initialed to acknowledge agreement, indicates that the refrigerator was in good condition at the start of the tenancy.

The Landlord submitted three invoices from an appliance company, which indicates the Landlord purchased four items. The landlord stated that he does not have the receipt with him and he is unable to explain why four items were purchased when he only needed to replace three items, nor could he explain which items were purchased to repair the three items that were damaged during the tenancy.

The Landlord stated that he did not replace the damaged refrigerator door and that he replaced the entire refrigerator a few months after this tenancy ended. He had difficulty articulating why he is claiming \$250.00 to repair the damaged door when the door was not repaired, although it appears to be for time spent investigating the costs/possibility of the repair.

The Landlord is seeking compensation, in the amount of \$17.91, for repairing a toilet handle that was cracked at the end of the tenancy. The Landlord stated that the handle was not damaged at the start of the tenancy. The male Tenant stated that the handle was cracked at the start of the tenancy, although he acknowledged that this damage was not noted on the condition inspection report that was completed at the start of the tenancy.

The Landlord submitted an invoice that shows he paid \$3.37 plus tax of \$0.24 to replace the toilet handle.

The Landlord is seeking compensation, in the amount of \$6.50, for replacing a light bulb. The Landlord stated that one light bulb was replaced in the master bathroom at the end of the tenancy and that it is now working.

The male Tenant stated that this light bulb burned out shortly after the tenancy began; the light bulb was replaced after the tenancy began; and the light bulb never worked, which caused him to believe it was a wiring problem.

The Landlord stated that he replaced the light bulb with a light bulb he had in stock, which he estimates cost \$6.50.

The Landlord is seeking compensation, in the amount of \$60.00, for time spent cleaning the washer and dryer. He stated that he spent approximately 1.5 hours cleaning these appliances.

The male Tenant stated that the entire unit was left in clean condition, including the washer and dryer. The Tenants submitted photographs of the rental unit that were taken at the end of the tenancy, which show the areas depicted in the photographs were left in clean condition.

The Landlord is seeking compensation, in the amount of \$100.00, because the rental unit was not fully vacated until May 01, 2016. The Landlord stated that the Tenants had all their property moved out of the rental unit on April 30, 2016 but they could not meet to inspect the rental unit until May 01, 2016 because the Tenants needed time to finish cleaning the rental unit on April 30, 2016. He stated that the keys were returned on May 01, 2016.

The male Tenant stated that:

- they had finished cleaning the rental unit by noon on April 30, 2016;
- the Landlord did not wish to complete the move out inspection on April 30, 2016 because the carpets were still wet;
- they did not complete any additional cleaning after 12:00 p.m. on April 30, 2016;
- they tried to return the keys to the Landlord when they were at the rental unit on April 30, 2016, but the Landlord refused to accept them;
- they went to the Landlord's home later in day on April 30, 2016 for the purposes of returning the keys but the Landlord was not home;
- and the keys were returned to the Landlord on May 01, 2016.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (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 rental units clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces where the tenant has used the rental unit in a reasonable manner.

On the basis of the photographs submitted in evidence I find that the damage to the walls and baseboards depicted in photographs #2, #3, and #4 of the Landlord's evidence package constitutes normal wear and tear. I find that the two small nicks in photographs #2 and #4 are consistent with the type of damage that occurs when a rental unit is occupied for over a year. I find that it is reasonable for tenants to hang art on their walls and that the damage depicted in photograph #3 is consistent with the damage that occurs when tenants display art.

As I have concluded that the damage to the walls/baseboard constitutes normal wear and tear, I find that the Tenants are not obligated to repair that damage. I therefore dismiss the Landlord's claim for repairing and painting the walls.

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 on February 27, 2015 does not indicate that the refrigerator was damaged at the start of the tenancy, I must conclude that it was not damaged at the start of the tenancy.

On the basis of the undisputed evidence I find that two crispers, a glass shelf in the refrigerator, and the refrigerator door were damaged at the end of the tenancy and I must conclude that they were damaged during the tenancy. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damaged refrigerator. I therefore find that the Landlord is entitled to compensation for repairing the refrigerator.

As the Landlord was unable to explain which of the four items that were purchased from the appliance company were used to replace the three items that were damaged inside the refrigerator, I am unable to conclude which of the three items the Tenants must pay for. I therefore find it reasonable to conclude that the Tenants must at least pay for the three most inexpensive items, which totals \$105.41 plus tax of \$11.59, which equals \$117.00.

As there is no evidence that the Landlord repaired the damaged refrigerator door, I dismiss his claim of \$250.00 for repairing the door.

As the condition inspection report that was completed on February 27, 2015 does not indicate that the toilet handle was damaged at the start of the tenancy, I must conclude that it was not damaged at the start of the tenancy.

On the basis of the undisputed evidence I find that the toilet handle was damaged at the end of the tenancy and I must conclude that it was damaged during the tenancy. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damaged handle. I therefore find that the Landlord is entitled to compensation for repairing the handle, which is \$3.61.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the light bulb in the master bathroom that was not working during the tenancy was replaced by the Landlord and is now working. Given that the light bulb worked when it was replaced by the Landlord, I find that the light bulb most likely did not work when it was replaced by the Tenants because it was improperly installed or because the replacement bulb was faulty. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to replace the light bulb with a functioning light bulb and that the Landlord is entitled to compensation for replacing the light bulb.

As the Landlord replaced the light bulb he had in stock, I find it reasonable that he was unable to provide a receipt for the light bulb. I find that his estimate of \$6.50 is reasonable and that he is entitled to compensation in this amount.

I find that the Landlord has submitted insufficient evidence to show that the washer and dryer were not left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that they were not left in clean condition or that refutes the Tenants' submission that they were left in clean condition. As the Landlord has failed to establish that appliances required cleaning, I dismiss his claim for compensation for cleaning.

In adjudicating the claim for cleaning I was influenced, to some degree, by the photographs submitted in evidence by the Tenants. In my view these show that the rental unit was left in very clean condition in general, which is inconsistent with the submission that the washer and dryer were left in a manner that required 90 minutes of cleaning.

In adjudicating this matter I have placed no weight on the condition inspection report that was completed on May 01, 2016, as the Tenants have clearly noted on that report that they do not agree the report fairly represents the condition of the unit at the time of the final inspection.

On the basis of the testimony of the male Tenant, I find that the Tenants attempted to return the keys to the Landlord on April 30, 2016 but they were unable to do so until May 01, 2016. In reaching this conclusion I was heavily influenced by the text message

sent to the Landlord on April 30, 2016, which was submitted in evidence by the Landlord. In this text message the male Tenant declares that the Landlord has “failed to be present at the agreed time at your home to hand over the keys. This is an obvious attempt to make it seem like we were not ready to hand over the unit”.

In the absence of any evidence to support the Landlord’s testimony that the rental unit had not been fully vacated and cleaned on April 30, 2016, I dismiss his claim for \$100.00 for a “late move out”.

While I find that the Landlord’s claim have some merit, I find it entirely likely that the parties could have resolved this dispute without a hearing if the Landlord’s claims had been limited to the damages that have been awarded. I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$127.11, which includes \$117.00 for repairing the refrigerator; \$3.61 for repairing the toilet handle; and \$6.50 for replacing a light bulb. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenants’ security deposit in full satisfaction of this monetary claim.

Based on these determinations I grant the Tenants a monetary Order for the amount \$807.89, which represents the remaining amount of their security and keys deposits which must now be returned by the Landlord. 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: October 25, 2016

Residential Tenancy Branch

