



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, 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 unpaid rent, 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.

The Agent for the Landlord stated that on May 30, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on May 30, 2016 were sent to the Tenant at the service address noted on the Application, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that the service address was provided to the Landlord as a forwarding address at the end of the tenancy.

In the absence of evidence to the contrary I find that the aforementioned 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, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on September 01, 2015;
- the Tenant agreed to pay monthly rent of \$650.00 by the first day of each month;
- the Tenant paid a security deposit of \$325.00;
- a condition inspection report was completed at the beginning of the tenancy;

- on May 03, 2016 the Landlord served the Tenant with a Ten Day Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by May 13, 2016;
- the Tenant vacated the rental unit on May 18, 2016;
- the Tenant only paid \$350.00 of the rent that was due for May of 2016; and
- a final condition inspection report was completed on May 18, 2016.

On the Application for Dispute Resolution the Landlord declared it is seeking compensation of \$110.00 for cleaning the rental unit; \$80.00 for cleaning the carpet; and \$40.00 for repairing a wall. On the Monetary Order Worksheet the Landlord declared it is seeking \$137.50 for cleaning; \$90.00 for cleaning the carpet; and \$50.00 for repairing a wall.

The Agent for the Landlord stated that the rental unit itself and the carpet in the rental unit required cleaning at the end of the tenancy. She stated that the paint on a wall was also damaged and needed repair.

The condition inspection report that was completed on May 18, 2016 was submitted in evidence. This report appears to have been signed by the Tenant to indicate that she agrees with the content of the report and that she consents to have her \$325.00 security deposit applied to her debt of \$580.00. The report corroborates the testimony that cleaning was required and that a wall was damaged.

The Agent for the Landlord stated that employees spent 7.5 hours cleaning the carpet and the rental unit and 2 hours repairing the wall, at an hourly rate of \$25.00. She stated that the Landlord rented a carpet cleaner from the strata corporation for \$40.00. The Landlord submitted records to corroborate these claims.

The Agent for the Landlord stated that there is a clause in the addendum to the tenancy agreement that requires the Tenant to pay a \$25.00 fee when she is late paying rent. The Landlord submitted a copy of the tenancy agreement and addendum. The Agent for the Landlord stated that rent was not paid on time in April or May of 2016 and the Landlord is seeking late fees of \$50.00.

Analysis

Rule 4.1 of the Residential Tenancy Branch Rules of Procedure stipulate that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and submitting it to the Residential Tenancy Branch. Rule 4.6 of the Residential Tenancy Branch Rules of Procedure stipulates that the Amendment to an Application for Dispute Resolution must be served on the respondent as soon as possible.

I find that the Landlord did not file an Amendment to an Application for Dispute Resolution to increase the amount of the original claim nor did the Landlord serve an

Amendment to an Application for Dispute Resolution to the Tenant. As the Landlord did not properly notify the Tenant of the Landlord's intent to increase the amount of the claim from \$580.00, I find that the amount of the claim cannot be increased.

Although the Landlord did serve the Tenant with a Monetary Order Worksheet, in which the Landlord increased the amount of the claims for damages, I find that is not sufficient notice of an amendment. I find that this document was included within a package of evidence; that it was not clearly identified as an amendment; and that it is possible the Tenant did not view the evidence as she had no intention of disputing the claim for \$580.00.

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.

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 rental unit in reasonably clean condition at the end of the tenancy and she failed to repair a wall that was damaged during the tenancy. The evidence shows that the Landlord paid more than \$230.00 to clean the unit and repair the walls. I therefore find that the Landlord is entitled to compensation for the full amount of the original claim for compensation for cleaning the rental unit and repairing the wall, which was \$230.00.

On the basis of the undisputed evidence I find that the Tenant still owes \$300.00 of the \$650.00 in rent that she was obligated to pay on May 01, 2016. As she is obligated to pay rent when it is due, pursuant to section 26 of the *Act*, I find that she must pay \$300.00 to the Landlord.

On the basis of the undisputed evidence I find that the Tenant did not pay her rent when it was due on April 01, 2016 and May 01, 2016 and that the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due. I therefore find that the Landlord is entitled to late fees of \$50.00 for the month of April and May of 2016.

As the Tenant has given the Landlord written authority to retain her security deposit, I find that the Landlord is entitled to retain that deposit pursuant to section 38 of the *Act*.

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 \$680.00, which includes \$230.00 for cleaning the unit and repairing a wall, unpaid rent of \$300.00, late fees of \$50.00, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. As the Landlord has the right to retain the security deposit of \$325.00, pursuant to section 38 of the *Act*, I find that the claim must be reduced by that amount.

Based on these determinations I grant the Landlord a monetary Order for the balance \$355.00. 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 *Act*.

Dated: November 25, 2016

Residential Tenancy Branch