



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MND, MNSD

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for unpaid rent, for a monetary Order for damage, and to keep all or part of the security deposit.

The Landlord stated that on August 03, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 5 pages of evidence the Landlords submitted with the Application were sent to the Tenants, via registered mail, at the service address noted on the Application. He stated that the package that was mailed to the male Tenant was returned by Canada Post and that the package that was mailed to the female Tenant was not returned.

The female Tenant acknowledged receipt of the Landlords' evidence and it was accepted as evidence for these proceedings. The male Tenant stated that he has seen all of the documents served by the Landlord.

The parties 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, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- the tenancy began in December of 2015;
- the Tenants agreed to pay rent of \$1,500.00 by the first day of each month;

- the Tenants paid a security deposit of \$750.00; and
- the Tenants provided a forwarding address by writing it on the condition inspection report that was completed in April of 2016.

The Landlord and the Tenant agree that this tenancy was the subject of two previous dispute resolution proceedings, the numbers of which have been recorded on the first page of this decision. At the hearing both parties agreed that I could refer to those decisions prior to rendering a decision in this matter.

The Landlord stated that the Tenant did not remove all of their furniture until April 12, 2016 and that the keys were returned to the Landlord on April 12, 2016. The female Tenant stated that all of their property was removed by March 03, 2016; that the Tenants returned to the rental unit in March and April of 2016 to clean; the rental unit was fully cleaned by April 12, 2016; and the keys were returned to the Landlord at the time of the final condition inspection, which was April 25, 2016.

The Landlords submitted an email from a neighbor, dated April 12, 2016, in which the neighbor reports observing furniture being moved from the rental unit between April 07, 2016 and April 12, 2016.

The Landlords are seeking compensation, in the amount of \$25.35, for repairing the door handle on the front door. The Landlord submitted a photograph of the door handle that was allegedly broken. The Landlord stated that the handle did not work at the end of the tenancy. The female Tenant stated that it did not work well at the start of the tenancy and that it was in the same condition at the end of the tenancy.

The Landlords are seeking compensation, in the amount of \$27.49, for replacing the door handle on a basement bedroom door. The Landlord stated that the handle was missing from this door at the end of the tenancy. The female Tenant stated that she removed the door handle on this door during the tenancy and placed it on another door in the unit that did not have a door handle. The Landlords submitted a receipt that shows it cost \$7.49 to purchase a replacement handle. The Landlord stated that he spent between 45 and 60 minutes replacing the handle.

The Landlords are seeking compensation, in the amount of \$43.31, for replacing approximately 8 or 9 light bulbs that burned out during the tenancy. The Landlord stated that he had to replace approximately 8 or 9 light bulbs that burned out during the tenancy. The female Tenant stated that several light bulbs did not work at the start of the tenancy and that no bulbs burned out during the tenancy.

The Landlords are seeking compensation, in the amount of \$125.00, for repainting a bedroom. The Landlord stated that he had to paint this bedroom because it smelled of marijuana. The Landlords submitted a photograph of an ashtray and a package of cigarettes, which the Landlord contends shows that the Tenants were smoking in the bedroom. The male Tenant stated that he moved the ashtray into the bedroom

because he was going to roll a cigarette from the tobacco left in the cigarette butts. He stated that nobody has ever smoked inside the rental unit.

Analysis

In a decision dated July 15, 2016 a Residential Tenancy Branch Arbitrator ordered the Landlord to return double the security deposit to the Tenants. As the issue of the security deposit has been determined by a Residential Tenancy Branch Arbitrator, I do not have authority to consider the Landlords' application to retain the Tenant's security deposit. The Landlords' application to retain the security deposit is dismissed without leave to reapply.

In a decision dated April 11, 2016 a Residential Tenancy Branch Arbitrator recorded a settlement agreement between these two parties. In this settlement agreement the parties mutually agreed that the tenancy ended on March 3, 2016 and that the Tenants did not have to pay any rent for March of 2016.

Although I accept that the tenancy ended on March 03, 2016, by mutual consent, I cannot conclude that the Tenants fully vacated the rental unit until April 12, 2016. In reaching this conclusion I was heavily influenced by:

- the testimony of the female Tenant, who stated that she was not fully cleaned until April 12, 2016;
- the testimony of the Landlord who stated that the Tenants' furniture was not moved from the rental unit until April 12, 2016; and
- the email from the neighbour who declared that she observed furniture being removed from the rental unit on April 12, 2016.

As the tenancy had officially ended on March 03, 2016, I find that the Tenants were not obligated to pay rent of \$1,500.00 on April 01, 2016. As the rental unit was not fully vacated until April 12, 2016, however, I find that the Tenants are obligated to pay rent for the 12 days they remained in possession of the rental unit in April, at a per diem rate of \$50.00, which is \$600.00. (12 days X \$50.00).

As there is no evidence that the Tenants remained in possession of the rental unit after April 12, 2016, I dismiss the Landlords' claim for rent for any period after April 12, 2016.

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.

I find that the Landlords submitted insufficient evidence to show that the handle on the front door was damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the handle was broken or that refutes the female Tenant's testimony that it was not damaged during the tenancy. In adjudicating this matter I placed no weight on the photograph of the door handle submitted in evidence, as that photograph does not show that the handle is damaged. As the Landlords have failed to meet the burden of proving that the handle was damaged, I dismiss the Landlords' claim for replacing the handle.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to replace the door handle that was removed from a basement bedroom door. Even if the Tenants removed that door handle for the purposes of installing it elsewhere in the unit, they were obligated to restore the unit to its original condition prior to vacating the unit. I therefore find that the Landlords are entitled to compensation for the cost of purchasing a replacement door handle, in the amount of \$7.49, and \$20.00 for the time the Landlord spent replacing the handle.

I find that the Landlords submitted insufficient evidence to show that all of the light bulbs in the rental unit were working at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the female Tenant's testimony that several light bulbs were burned out at the start of the tenancy. As the Landlords have failed to establish that all of the light bulbs were in good working order at the start of the tenancy, I find that the Landlords cannot establish that light bulbs burned out during the tenancy. I therefore dismiss the Landlords' claim for replacing light bulbs.

I find that the Landlords submitted insufficient evidence to show that the bedroom needed to be repainted to eliminate the smell of smoke. I find that the male Tenant provided a reasonable explanation for why there was an ashtray inside the rental unit and I find the presence of the ashtray is not sufficient to refute the Tenant's testimony that nobody smoked inside the rental unit. As the Landlords have failed to establish that there was smoking inside the unit, I dismiss the claim for painting.

Conclusion

The Landlords have established a monetary claim, in the amount of \$627.49, which includes \$27.49 in damages and \$600.00 rent for April of 2016.

Based on these determinations I grant the Landlord a monetary Order for \$627.49. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: January 31, 2017

Residential Tenancy Branch