



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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.

The Agent for the Landlord stated that on October 14, 2016 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and 22 pages of evidence submitted to the Residential Tenancy Branch on October 14, 2016 were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and the evidence was accepted for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Tenant stated that his Application for Dispute Resolution and the Notice of Hearing were delivered to the Landlord's business office, although he does not recall the date of service. The Agent for the Landlord acknowledged receipt of these documents.

On October 17, 2016 the Landlord submitted 36 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that he thinks these documents were mailed to the Tenant on October 17, 2016. 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

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's dispute.

In the Application for Dispute Resolution the Landlord declared it was seeking \$200.00 in "damages". In the Monetary Order Worksheet the Landlord declared it was seeking \$200.00 in "Damages/Repairs". No details of the nature of the damages are provided in either the Application for Dispute Resolution or the Monetary Order Worksheet. The Agent for the Landlord stated that the "damages" are noted on the condition inspection report that was completed at the end of the tenancy.

As the Application for Dispute Resolution and the Monetary Order Worksheet do not clearly outline why the Landlord is seeking \$200.00 in damages, I find that it would be prejudicial to the Tenant to proceed with the Landlord's claim for \$200.00. I find the absence of detail makes it difficult, if not impossible, for the Tenant to prepare a response to the claims. Although the Landlord did outline some damages on the condition inspection report, I find that this is not, in my view, sufficient notice of the full details of this claim.

For these reasons I decline to consider the Landlord's claim of \$200.00 for damages.

Issue(s) to be Decided

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

Is the Tenant entitled to compensation for loss of personal property?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began in March of 2016;
- the monthly rent was due by the first day of each month;
- the Tenant paid a security deposit of \$175.00; and
- at a previous dispute resolution hearing the parties mutually agreed that the tenancy would end on July 15, 2016

The Agent for the Landlord stated that a condition inspection report was completed at the start of the tenancy. The Tenant is not certain, but he believes one was completed at the start of the tenancy.

The Agent for the Landlord stated that the parties met on July 15, 2016 for the purposes of completing a final condition inspection report; the report was not completed as the

unit was not empty or clean; and the Tenant told the person conducting the inspection that he would not be returning to the rental unit.

The Tenant stated that he meet with an agent for the Landlord on July 15, 2016, although he does not know the purpose of that meeting. He understood this was the last day of the tenancy; the agent for the Landlord he met with told him not to return to the rental unit; and he agreed that he would not return.

The Agent for the Landlord stated that a forwarding address for the Tenant was written on the condition inspection report, although he does not know when that address was added to the report. The condition inspection report, which was submitted in evidence, appears to have been signed by the Tenant and the Landlord in July of 2016.

The Tenant stated that he handed his forwarding address, in writing, to the on-site manager on May 31, 2016.

The Landlord is seeking compensation, in the amount of \$700.00, for cleaning the rental unit; \$150.00 for cleaning the carpets; and \$564.90 for disposing of property left in the rental unit. The Landlord submitted photographs of the rental unit which were taken on July 15, 2016. The Tenant agrees that the photographs fairly represent the condition of the rental unit at the end of the tenancy.

The Landlord submitted a list of charges for cleaning the rental unit, which was completed by employees of the Landlord, which total \$850.00. The Landlord submitted an invoice for \$564.90 for the cost of disposing of the Tenant's personal property, much of which is shown in the photographs submitted.

The Agent for the Landlord stated that all of the personal belongings left in the unit were soiled and had no market value. The Tenant stated that he cleaned around the property shown in the photographs; that he did not have time to move all of this property; when the property he left in the unit was new it was worth approximately \$7,500.00; and he does not know the current market value of that property.

The Landlord is seeking compensation, in the amount of \$35.00, for storage fees. The Landlord and the Tenant agree that the Tenant was required to pay \$10.00 per month for storage during the tenancy and that he did not pay this fee for April, May, June, and July of 2016.

The Landlord is seeking compensation, in the amount of \$55.00, for replacing keys. The Agent for the Landlord stated that the Tenant was provided with 3 keys at the start of the tenancy and that the keys were not left in the rental unit at the end of the tenancy. The Tenant stated that all of the keys to the rental unit were left on the counter of the rental unit. and the Tenant agree that the Tenant was required to pay \$10.00 per month for storage during the tenancy and that he did not pay this fee for April, May, June, and July of 2016.

The Landlord did not submit a receipt for the cost of replacing the keys. The Agent for the Landlord stated that the \$55.00 claim for keys was an "internal charge".

The Landlord is seeking compensation, in the amount of \$25.00, for replacing a smoke alarm. The Agent for the Landlord stated that the smoke detector was damaged at the end of the tenancy; that the Landlord paid \$10.00 for a replacement; and that an employee replaced the smoke detector, at an estimated cost of \$15.00. The Tenant acknowledged that the smoke detector fell when he was attempting to re-set it.

The Landlord submitted an invoice that shows the Landlord paid \$10.00 plus tax for a smoke detector.

The Tenant is seeking compensation, in the amount of \$6,200.00, for replacing personal property that was discarded by the Landlord at the end of the tenancy. The Tenant stated that he did not arrange to have all of his personal property moved from the rental unit at the end of the tenancy; he did not tell any person acting on behalf of the Landlord that he would be returning to recover his personal property; and he believed that the Landlord would arrange to have his property stored by a bailiff.

The Tenant submitted a list of property he alleges was left in the rental unit and storage unit, which includes 2 televisions. He did not submit any evidence to corroborate his claim that the listed items were left on the property nor did he submit any evidence of the current market value of those items.

The Agent for the Landlord stated that no televisions were left on the property and that none of the property left has any value.

Analysis

On the basis of the undisputed evidence I find that this tenancy ended on July 15, 2016, by mutual agreement.

I find that the Landlord received a forwarding address for the Tenant, in writing. If I accepted the testimony of the Tenant, I would find that the forwarding address was provided to an agent for the Landlord, in writing, on May 31, 2016. Even if this date is inaccurate I find it reasonable to conclude that the address had been received by an agent for the Landlord by July 20, 2016, as that is the date the report was signed by an agent and the address appears on the report.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on July 15, 2016; a forwarding address was received by July 20, 2016; the Landlord did not file an Application for Dispute Resolution until October 11,

2016; and the security deposit has not been returned, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit.

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.

The burden of proving the rental unit was damaged rests with the Landlord.

On the basis of the testimony of the Agent for the Landlord 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 \$1,414.90. I find that the invoice submitted and the calculation of the costs of having the rental unit cleaned are sufficient to support this claim.

In adjudicating the claim for cleaning I placed little weight on the Tenant's testimony that he cleaned around the personal property shown in the photographs, as I find that no meaningful cleaning could have occurred in these circumstances.

On the basis of the undisputed evidence I find that the Tenant was required to pay \$10.00 per month for storage during the tenancy and that he did not pay this fee for April, May, June, and July of 2016. I therefore grant the Landlord's application to recover storage fees of \$35.00.

In addition to establishing that a tenant damaged a rental unit, a landlord must also accurately establish the cost of repairing the damage caused by a tenant whenever compensation for damages is being claimed. Even if I accepted the Agent for the Landlord's testimony that the keys for the unit were not returned, I would dismiss the Landlord's application to recover the cost of replacing the keys as I am not satisfied that the Landlord has established the true cost of replacing the keys. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's claim that it actually cost \$55.00 to replace three keys.

On the basis of the testimony of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the smoke alarm

that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation of \$25.00 for replacing the item. I find that the invoice submitted and the estimate of the costs of labour to replace the item are sufficient to support this claim.

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.

The burden of proving the Landlord discarded valuable personal property rested with the Tenant.

Section 24(1)(a) of the *Residential Tenancy Regulation* stipulates that a landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended. On the basis of the undisputed evidence I find that the Tenant left personal property on the residential property after the tenancy ended. I therefore find that this property was abandoned, pursuant to section 24(1)(a) of the *Residential Tenancy Regulation*.

Section 24(3) of the *Residential Tenancy Regulation* stipulates that a landlord may remove abandoned personal property from the residential property and must deal with it in accordance with the *Residential Tenancy Regulation*.

Section 25(2)(a) of the *Residential Tenancy Regulation* stipulates that a landlord may dispose of abandoned property in a commercially reasonable manner if the landlord reasonably believes that the property has a total market value of less than \$500.00.

On the basis of the testimony of the Agent for the Landlord I find that the Landlord believed that the personal property left in the rental unit had a current market value of less than \$500.00. On the basis of the photographs of the property submitted in evidence, I find that this was a reasonable conclusion. Although the value of the items in the photographs may have been worth more than \$500.00 when they were new, I find that it is highly unlikely that the Landlord would have been able to sell the items for anywhere near \$500.00.

In adjudicating the Tenant's claim I was heavily influenced by the absence of any evidence that corroborates his testimony that there were two large televisions left on the property or that refutes the Agent for the Landlord's testimony that no large televisions were left on the property. The photographs do show that there was a screen that appears to be the size of a computer monitor left behind.

In adjudicating the Tenant's claim I was heavily influenced by the absence of any evidence that corroborates the Tenant's testimony that the personal items he left behind, when new, were worth approximately \$7,500.00 when they were new.

In adjudicating the Tenant's claim I was heavily influenced by the absence of any evidence that establishes the current market value of the abandoned items exceeds \$500.00.

As there is insufficient evidence to establish that the current market value of the abandoned items exceeds \$500.00, I cannot conclude that the Landlord did not have the right to dispose of the abandoned property, pursuant to section 25(2)(a) of the *Residential Tenancy Regulation*.

As the Tenant has failed to establish the Landlord breached the legislation by disposing of the abandoned property, I dismiss his claim for compensation for the property.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,574.90, which includes \$1,414.90 for cleaning; \$35.00 for storage; \$25.00 to replace a smoke detector; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

The Tenant has established a monetary claim, in the amount of \$350.00, which is double the security deposit.

After offsetting the two claims I find that the Tenant owes the Landlord \$1,224.90 and I grant the Landlord a monetary Order for that amount. 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: March 30, 2017

Residential Tenancy Branch