Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, O, FF

Introduction

A hearing was convened on March 09, 2017 in response to cross applications.

The male Landlord filed an Application for Dispute Resolution, in which the Landlords applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution. As outlined in my interim decision of March 10, 2017, I accepted that the Application for Dispute Resolution and 13 pages of evidence the Landlord submitted with the Application were served to the Tenant.

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, to recover all or part of the security deposit, for "other", and to recover the fee for filing this Application for Dispute Resolution. As outlined in my interim decision of March 10, 2017, I accepted that the Application for Dispute Resolution was served to the Landlords.

As outlined in my interim decision of March 10, 2017 the hearing was adjourned, in part, to provide the Landlords with the opportunity to re-serve the 20 pages of evidence he allegedly mailed to the Tenant on February 22, 2017. The male Landlord stated that this evidence was mailed to the Tenant on March 20, 2017. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

As outlined in my interim decision of March 10, 2017 the hearing was adjourned, in part, to provide the Tenant with the opportunity to re-serve the 35 pages of evidence she allegedly mailed to the Landlord with her Application for Dispute Resolution and the 42 pages of evidence she allegedly emailed to the Landlord. On March 07, 2017 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch, which I did not have at the original hearing. (Some of the aforementioned documents were duplicates). The Tenant stated that 52 pages of evidence were mailed to the Landlords on March 24, 2017. The Landlords acknowledged receipt of this evidence and it was 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

At the hearing the Tenant stated that she was also seeking compensation for loss of services. The Tenant acknowledged that this claim was not mentioned on her Monetary Order Worksheet but she contends it was mentioned in her evidence.

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 Tenant's Application for Dispute Resolution/Monetary Order Worksheet does not clearly inform the Landlords that she is seeking compensation for loss of services and I therefore decline to consider that claim.

Although the Tenant refers to loss of services in documents she submitted with her Application for Dispute Resolution, I find that these references do not sufficiently notify the Landlords that she is seeking compensation for loss of services.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Is the Tenant entitled to a rent refund or compensation for damaged personal property?
Should the Landlord be authorized to retain all or part of the security deposit or should it be returned to the Tenant?

Background and Evidence

The Landlords and the Tenant agree that:

- the tenancy began on August 05, 2012;
- the Tenant agreed to pay monthly rent of $800.00 by the first day of each month;
- the Tenant paid a security deposit of $400.00;
- the Tenant paid a pet damage deposit of $200.00;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy;
- the Landlords served the Tenant with a Two Month Notice to End Tenancy, which required her to vacate by August 31, 2016;
- the rental unit was vacated on August 30, 2016;
- the Tenant provided the male Landlord with a forwarding address on August 30, 2016, who recorded it on the final condition inspection report;
- on September 13, 2016 the Landlords sent the Tenant a deposit refund of $200.00, via email transfer; and
- the Tenant did not accept the email transfer.

The male Landlord stated that the Tenant was given a copy of the initial condition inspection report shortly after it was completed. The Tenant stated that she was not provided with a copy of the initial condition inspection report shortly after it was completed.

The male Landlord stated that a copy of the final condition inspection report was served to the Tenant with the evidence served for these proceedings. The Tenant acknowledged receiving the final condition inspection report, although she does not recall when/how it was received.

The Landlords are seeking compensation, in the amount of $200.00, for replacing a microwave in the rental unit. The Landlords submitted an on-line estimate for a microwave, in the amount of $199.99. The male Landlord estimated the microwave was three years old at the start of the tenancy.

The male Landlord stated that a microwave was provided with the unit at the start of the tenancy. The Tenant stated that there was no microwave in the unit at the start of the tenancy.

The Landlord submitted a photograph of the rental unit at the start of the tenancy (p. 5), which he stated was taken on July 26, 2012. He provided a computer entry that shows this photograph was “modified” on July 26, 2016 and “created” on August 30, 2016. The Tenant stated that she does not agree that this photograph represents the condition of the unit at the start of the tenancy.

The Landlords and the Tenant agree that when the rental unit was inspected at the end of the tenancy, there was no microwave in the rental unit and that the Tenant agreed to return the microwave and leave it at the Landlords’ front door. The Tenant stated that she initially agreed to return the microwave because she was not certain who owned the microwave.

The Tenant stated that she subsequently found a receipt for the microwave and concluded the microwave that she removed from the rental unit belonged to her. The Tenant submitted a copy of a receipt for a microwave, dated March 02, 2002.

The Landlords are seeking compensation, in the amount of $210.00, for cleaning the carpet. The male Landlord stated that the carpet was not stained at the end of the tenancy but it appeared “faded”, as if it needed to be cleaned. The Tenant stated that she borrowed a carpet cleaner and cleaned the carpet on August 29, 2016.

The Tenant is seeking compensation for rent for August of 2016. The parties agree that no rent was paid for August of 2016 because the Tenant was served with a Two Month Notice to End Tenancy.

The Tenant stated that on July 04, 2016 she posted written notice of her intent to vacate the rental unit, effective July 30, 2016, on the Landlords' door. The Landlords deny receiving this notice.

The Tenant is seeking a rent refund because access to the rental unit was restricted/denied. In support of this claim the Tenant stated that:

- the Landlord was building a deck which impacted access to her rental unit;
- the construction began in May of 2016;
- she is not certain, but she thinks construction was completed on August 30, 2016;
- vehicles and construction materials prevented movers from accessing her rental unit, thereby preventing her from moving prior on July 30, 2016;
- she was able to come and go from her rental unit during most of the construction;
- for 4 days access to her home was restricted by a ladder that was in front of her door; and
- the workers would move the ladder at her request.

In response to the claim for restricted access the male Landlord stated that:

- construction on the deck began in May of 2016;
- 95% of the construction was complete by July 28, 2016;
- the construction did not typically prevent the Tenant from access the rental unit;
- movers may have been prevented from accessing the driveway for brief periods when material was delivered to the site; and
- there was a ladder in front of the Tenant's front door for 45 to 60 minutes.

The Tenant submitted some black and white photocopied images that depict the construction site at various stages.

The Tenant is seeking compensation for a damaged drying rack. The Tenant stated that the rack was stained with grease and oil that fell onto the rack when the Landlords were cleaning the deck. The Landlords deny the allegation.

The Tenant stated that none of her photographs show the stains on the drying rack.

The Tenant is seeking compensation for mailing costs.

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.

I find that there is insufficient evidence to corroborate the Landlords' submission that the Tenant was given a copy of the initial condition inspection report shortly after it was completed or to refute the Tenants' submission that she was not provided with a copy of the initial condition inspection report shortly after it was completed. As I have insufficient evidence to determine whether the Tenant was provided with a copy of the initial condition inspection report shortly after it was completed, I have not placed on weight on this issue.

I favour the evidence of the Landlords, who contend that that there was a microwave in the rental unit at the start of the tenancy, over the evidence of the Tenant who contends there was not a microwave in the rental unit at the start of the tenancy. In reaching this conclusion I was influenced, in part, by the photograph submitted in evidence by the Landlord, which clearly shows there was a rental unit in the rental unit. Although the computer entry that shows this photograph was "modified" on July 26, 2016 and "created" on August 30, 2016, I find it reasonable to conclude that it was actually created on July 26, 2016.

My conclusion that there was a microwave in the unit at the start of the tenancy was further influenced by the fact the Tenant initially agreed to return the microwave at the end of the tenancy. I find it highly unlikely that the Tenant would agree to return a microwave if one had not been provided with the tenancy.

In adjudicating the claim for the microwave I placed little weight on the microwave receipt the Tenant submitted in evidence. As this receipt was dated March 02, 2002 and the tenancy began on August 05, 2012, I find it entirely possible that the Tenant discarded this microwave upon determining there was a microwave in the unit. Even if the Tenant used the microwave she purchased in 2002 during her tenancy, she was obligate to return the microwave provided with the rental unit at the end of the tenancy.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the microwave in the rental unit at the end of the tenancy and that the Landlords are entitled to compensation for replacing the microwave.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of a microwave is ten years. The evidence shows that the microwave was three years old at the start of the tenancy and that it was, therefore approximately seven years old at the end of the tenancy. I therefore find that the microwave had depreciated by 70% and that the Landlords are entitled to recover 30% of the cost of replacing the microwave, which in these circumstances is $59.70.

I find that the Landlord submitted insufficient evidence to establish that the carpet needed cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs or a notation on the condition inspection report, that corroborates the claim that the carpet needed cleaning or that refutes the Tenant's testimony that it was cleaned on August 29, 2016. In the absence of corroborating evidence, I dismiss the claim for cleaning the carpet.

As no rent was paid for August of 2016 and the rental unit was not vacated until August 30, 2016, I find that the Tenant received the compensation that was due to her pursuant to section 51(1) of the *Act.* I therefore dismiss the Tenant's application for compensation for August rent.

In adjudicating the claim for August rent I have placed no weight on the Tenant's submission that she posted notice of her intent to vacate the rental unit, effective July 30, 2016, on the Landlords' door, as she did not vacate the rental unit until August 30, 2016.

I find that the Tenant has submitted insufficient evidence to establish that the construction on the deck prevented movers from accessing the rental unit. Although there are photographs of vehicles/items in the driveway, there is no evidence to suggest that those vehicles/items would not have been moved at the request of the movers or that the movers could not have carried furniture around those vehicles/items.

I find that the Tenant has submitted insufficient evidence to establish that access to her rental unit was restricted for any significant period of time because of a ladder in front of her door. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate her claim that the ladder was in front of her door for 4 days or that refutes the male Landlord's testimony that it was there for 45 to 60 minutes. In reaching this conclusion I was further influenced by the Tenant's admission that the workers would move the ladder at her request.

While I accept that the access to the rental unit was somewhat restricted during construction, I find that the restrictions were minimal. I therefore dismiss the Tenant's application for compensation as a result of that restricted access.

I find that the Tenant has submitted insufficient evidence to establish that the Landlords damaged her drying rack. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, to corroborate her claim that the rack was stained or that refutes the male Landlord's testimony that it was not stained. I therefore dismiss the Tenant's application for compensation for the drying rack.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process.

As mailing costs are costs associated with participating in the dispute resolution process, I dismiss her claim to recover such costs.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing an Application for Dispute Resolution.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $159.70 which includes $59.70 for replacing the microwave 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 $159.70 from the Tenant's security deposit in full satisfaction of this monetary claim.

I find that the Landlord must return the remaining $440.30 of the Tenant's security deposit /pet damage deposit and I grant the Tenant a monetary Order for that amount**.** In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, 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: April 18, 2017

Residential Tenancy Branch