



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF, OPC

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. As the rental unit has been vacated, there is no need to consider the application for an Order of Possession.

The Landlord stated that on June 02, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were personally served to the Tenant. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings, with the exception of the four page addendum to the tenancy agreement.

On June 16, 2017 the Landlord submitted 19 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the forwarding address provided by the Tenant, via registered mail, on June 16, 2017. The Tenant acknowledged receiving this evidence, although she did not provide it to her advocate and she did not have it at the time of the proceedings. As the Tenant acknowledged receipt of this evidence, 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. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

The four page addendum to the tenancy agreement submitted in evidence by the Landlord contains 8 photographs of the rental unit that are intended to represent the condition of the rental unit at the start of the tenancy, with a space for initials below each photograph. The photographs in the addendum submitted to the Residential Tenancy Branch are clear and in colour. The Advocate for the Tenant stated that the photographs on the four page addendum are unclear and black and white. The Landlord stated that the photographs provided to both parties were identical.

During the hearing I determined that there was insufficient evidence to conclude that the photographs in the addendum that were served to the Tenant were identical to the photographs submitted to the Residential Tenancy Branch. I therefore directed the Landlord to re-submit digital copies of these photographs to the Residential Tenancy Branch and to serve the identical digital evidence to the Tenant. At the hearing the parties were advise that this evidence must be served to the Residential Tenancy Branch and the email address provided by the Advocate for the Tenant, no later than August 25, 2017.

At the hearing the Tenant was advised that she may submit a written response to the photographs in the addendum by September 15, 2017 and the Landlord was advised that he may submit a written response to the Tenant's written response by September 30, 2017.

Two people have initialed each photograph in the four page addendum to the tenancy agreement that was submitted to the Residential Tenancy Branch. After discussing re-service of the photographs in the addendum the Advocate for the Tenant stated that the photographs are not initialed on the four page addendum served to the Tenant. The Landlord stated that this is because he submitted the original document to the Residential Tenancy Branch and he provided a computer generated copy to the Tenant.

Upon reflection, I find that the four page addendum to the tenancy agreement should not be accepted as evidence for these proceedings. I therefore will not accept any additional evidence, including the photographs and written submissions the parties were told they could submit after the hearing. This decision will be based on the evidence available to me at the time of the hearing, with the exception of the four page addendum.

In determining that the four page addendum should not be accepted as evidence for these proceedings I was guided by rule 3.7 of the Residential Tenancy Branch Rules of Procedure, which stipulate, in part, that “an identical package of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch”. As the photographs in the addendum submitted to the Residential Tenancy Branch were initialed and the photographs in the addendum served to the Tenant were not initialed, I find the evidence should be excluded because it was not identical.

In determining that the four page addendum should not be accepted as evidence I was influenced by my conclusion that allowing the evidence to be re-served on the Tenant delays these proceedings by over two months. I find that this delay unreasonably prejudices the Tenant, who is awaiting the return of her security deposit.

Preliminary Matter #2

This hearing was scheduled to commence at 09:00 a.m. on July 05, 2017. The Tenant joined the teleconference at the scheduled start time but the Landlord did not.

At the outset of the teleconference the Tenant was advised that the Landlord's Application for Dispute Resolution would be dismissed if the Landlord did not appear at the teleconference.

At approximately 9:11 the Tenant was advised that the teleconference would be terminated and the Application for Dispute Resolution would be dismissed, at which point the Landlord dialed into the teleconference.

The Advocate for the Tenant argued that the Application for Dispute Resolution should be dismissed based on the information provided to the Tenant prior to the Landlord joining the teleconference. I disagree.

At the conclusion of a dispute resolution proceeding I am obligated to provide the parties with a written decision, which is final and binding. It is the written decision that is final and binding and until such time as that written decision is rendered I have the right and obligation to reconsider any oral decision made at the proceedings.

In these circumstances the Landlord attended the hearing just before the teleconference was terminated and I find it would breach of the principles of natural justice not to proceed with the hearing once the Landlord joined the teleconference.

Preliminary Matter #3

At approximately 9:16 a.m. the Landlord exited the teleconference. The Landlord dialed back into the teleconference at approximately 9:18 a.m.

The Advocate for the Tenant argued that the Application for Dispute Resolution should be dismissed because the Landlord was apparently not prepared to proceed. She based this submission on the fact the Landlord did not join the teleconference at the scheduled start time and because the Landlord prematurely exited the teleconference at 9:16 a.m.

I disagree. The Landlord stated that he was joining the teleconference from India. Given that the Landlord was telephoning from another country, I find that it is reasonable to expect some difficulty with telephone connections, including a delay in joining the teleconference. As there were no further telephone problems after 9:18 a.m., I find there is no reason to conclude that the Landlord was not prepared to proceed.

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 Landlord and the Tenant agree that:

- the tenancy began on November 01, 2016;
- the Tenant agreed to pay rent off \$850.00 by the first day of each month;
- the Tenant paid a security deposit of \$425.00;
- the Tenant was served with a One Month Notice to End Tenancy, which required her to vacate the rental unit by May 31, 2017;
- the tenancy ended on the basis of this One Month Notice to End Tenancy;
- the Tenant did not vacate the rental unit until June 04, 2017;
- a condition inspection report was not completed at the start of the tenancy; and
- a condition inspection report was not completed at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$113.33, for unpaid rent for the four days in June the Tenant occupied the rental unit. The Tenant agreed that the Landlord is entitled to rent in this amount.

The Landlord is seeking compensation, in the amount of \$30.00, for repairing a shower door. The Landlord stated that a piece on the bottom of the shower door that guides the door was functional at the start of the tenancy and that it was broken at the end of the tenancy. A photograph of the damage was not submitted in evidence.

The Tenant acknowledged that the shower door worked properly at the start of the tenancy and that it broke during the tenancy, although she does not know why it broke.

The Landlord is seeking compensation, in the amount of \$30.00, for repairing a bathroom vanity door. The Landlord stated that the door had fallen off the cabinet and he spent one hour replacing the door. He stated that he purchased new hinges and screwed them into the existing holes in the cabinet. A photograph of the damaged cabinet was submitted in evidence.

The Tenant stated that sometime in April of 2017 her young child opened the door and it fell off the cabinet. She argued that the wood on the cabinet was "rotten", which she contends is demonstrated by the photograph submitted in evidence.

The Landlord did not submit a receipt for the hinges he purchased to repair the cabinet door.

The Landlord is seeking compensation, in the amount of \$200.00, for cleaning the rental unit and disposing of items left on the residential property by the Tenant. The Landlord submitted photographs of the property left at the end of the tenancy and items left on the kitchen counter.

The Tenant acknowledged that the photographs represent the cleanliness of the rental unit at the end of the tenancy. She stated that she was cleaning the rental unit at the end of the tenancy when the Landlord, his wife, and neighbours came to the rental unit. She stated that the Landlord was yelling about damage to the unit so she did not finish cleaning the unit because she was concerned about the behavior of the Landlord. She stated that the Landlord left the rental unit approximately 15 minutes prior to her vacating the unit.

The Landlord stated that he and his wife went to the rental unit on June 04, 2017 to inspect the unit, at the request of the Tenant. He stated that she was not finished cleaning when he arrived; that they argued about the return of the security deposit; and that the Tenant would not agree to his offer to refund \$180.00 of the security deposit.

He stated that he and his wife left the rental unit at approximately 8:00 p.m. or 8:30 p.m., and that the Tenant left the unit at 9:50 p.m.

The Landlord stated that he spent approximately 5 hours cleaning the rental unit and disposing of the items the Tenant left behind at the end of the tenancy.

The Tenant stated that she told the Landlord she left property behind to be picked up by a local charity. The Landlord agrees the Tenant told him that the items would be picked up by a charity but they had not been removed by June 13, 2017, when they were disposed of by the Landlord.

The Landlord is seeking compensation, in the amount of \$75.00, for cleaning and painting the ceiling in the kitchen. The Landlord stated that there is smoke damage on the ceiling that appears to have been caused by some sort of cooking accident. He stated that the damage was not present at the start of the tenancy. He stated that the photographs in the addendum to the tenancy agreement show that the ceiling was not damaged at the start of the tenancy.

The Tenant stated that she does not recall seeing the damage to the kitchen ceiling; she does not know if the ceiling was damaged at the start of the tenancy; and she does not recall a cooking accident that would have caused the damage.

The Landlord stated that it took his wife 30-45 minutes to clean and repaint the ceiling. The Landlord did not submit receipts for supplies used to repair the damaged ceiling.

The Advocate for the Tenant asked the Landlord why claimed compensation of \$2,000.00 in his Application for Dispute Resolution when he offered to return \$180.00 of the security deposit to the Tenant on June 04, 2017. The Landlord stated that when he filed his Application for Dispute Resolution a Residential Tenancy Branch Information Officer advised him that he could also claim compensation for rent for June and July, given that the rental unit had not yet been vacated. At the hearing he withdrew the claim for unpaid rent, with the exception of rent for the first four days of June.

Analysis

As the Tenant agreed that the Landlord is entitled to rent of \$113.33 for the four days in June she occupied the rental unit, I grant the Landlord's claim for this amount.

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)(a) of the *Act* stipulates that when a tenant vacates the rental unit the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

I find that the Landlord submitted insufficient evidence to establish that the shower door was damaged by the actions or neglect of the Tenant, rather than reasonable wear and tear. In reaching this conclusion I was influenced by the absence of evidence that shows the shower door was used inappropriately and I find it entirely possible that this guide could have broken through normal use. I therefore dismiss the Landlord's claim for repairing the door.

On the basis of the undisputed evidence I find a door on a bathroom vanity fell off during the tenancy. On the basis of the photograph submitted in evidence I find that the cabinet was in good condition and that the door would not have simply fallen off without excessive force. On the basis of the Tenant's testimony I find that the door likely fell off when it was opened by the Tenant's young child, who may have been using the door for support or fell onto the open door.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the bathroom vanity door. I therefore find that the Landlord is entitled to compensation for the one hour he spent repairing the door, in the amount of \$25.00. I find \$25.00 a reasonable hourly wage for labour of this nature.

As the Landlord did not submit receipts for costs associated to repairing the door, I dismiss his claim for anything other than labour.

On the basis of the undisputed evidence, in particular the photographs of the rental unit, 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. I therefore find that the Landlord is entitled to compensation for the five hours he spent cleaning the unit and disposing of garbage, in the amount of \$125.00. I find \$25.00 a reasonable hourly wage for labour of this nature.

As the Landlord did not submit receipts for costs associated to cleaning the unit, I dismiss his claim for anything other than labour.

In adjudicating the claim for cleaning I have placed no weight on the Tenant's submission that did not finish cleaning the unit because she was concerned about the behavior of the Landlord. As the Tenant acknowledges that the Landlord left the rental unit approximately 15 minutes prior to her vacating the unit, I find that she was free to continue cleaning without impediment from the Landlord.

In adjudicating the claim for cleaning I have placed no weight on the Tenant's submission that she left personal items on the property, which was to be picked up by a local charity. Even if that were true, the undisputed evidence is that the items were not picked up by the charity by the time the Landlord disposed of the items on June 13, 2017. Without some assurance that the charity was actually going to pick up the donated items, I find that there can be no reasonable expectation that a landlord would leave personal items on his/her property for more than a week.

I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the smoke damage to the ceiling in the kitchen. I therefore find that the Landlord is entitled to compensation for time his wife spent repairing the damage. As the Landlord estimates that it took 30-45 minutes to repair the damage and I find it reasonable to conclude that it would take at least 45 minutes to clean and repaint the damaged portion of the ceiling, I grant the Landlord compensation in the amount of \$18.75. I find \$25.00 a reasonable hourly wage for labour of this nature.

As the Landlord did not submit receipts for costs associated to repairing the ceiling, I dismiss his claim for anything other than labour.

I found the Landlord's testimony that the ceiling was not damaged at the start of the tenancy more compelling than the Tenant's testimony that she never noticed that the ceiling was damaged at any point in the tenancy. On the basis of the photograph submitted in evidence I find that the damage to the ceiling was very apparent and I find it highly unlikely that the Tenant would not have noticed it. As I have accepted the Landlord's testimony that the ceiling was not damaged at the start of the tenancy, I must conclude that it was damaged during the tenancy.

In adjudicating the claim for repairing the ceiling I have placed no weight on the addendum to the tenancy agreement, as it was not accepted as evidence.

In adjudicating this claim I have placed no weight on the fact the Landlord claimed compensation of \$2,000.00 in his Application for Dispute Resolution after offering to return \$180.00 of the security deposit to the Tenant on June 04, 2017. I find that the Landlord's explanation that he claimed compensation for rent for June and July because the rental unit had not yet been vacated, was reasonable. As the Application for Dispute Resolution was filed on June 02, 2017, the Landlord could not have known the unit would be vacated on June 04, 2017.

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 \$382.08, which includes \$113.33 in rent for June of 2017; \$25.00 for repair a bathroom vanity door; \$125.00 for cleaning the rental unit; \$18.75 for repairing the damaged ceiling; 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 \$382.08 from the Tenant's security deposit of \$425.00 in full satisfaction of this monetary claim. As the Landlord has not established a right to retain the full security deposit I find that he must return the remaining \$42.92 to the Tenant and I grant the Tenant a monetary Order for that amount. 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 *Act*.

Dated: July 06, 2017

Residential Tenancy Branch