



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0747051 BC LTD. and COLDWELL BANKER MACPHERSON REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

In the first application the tenant seeks to recover a \$725.00 security deposit doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “*Act*”).

In the second application the landlord seeks to recover the \$414.31 cost of replacing a toilet after the tenant vacated the rental unit.

The parties attended the hearing, the respondents by their agent Mr. MacP., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the landlord entitled to be compensated for replacement of a toilet? Is the tenant entitled to have her deposit money doubled under s. 38 of the *Act*?

Background and Evidence

The rental unit is a three bedroom basement suite. The tenant moved in with two co-tenants in February 2014 then signed a new tenancy agreement as sole tenant in February 2015. She vacated the premises in September 2016.

The tenant had accidentally cracked and chipped the toilet tank top shortly before the end of her tenancy. The parties were aware of the damage and the tenant agreed to

locate and purchase a new top. She was unsuccessful because the toilet did not have a observable brand name or serial number.

Eventually, in May 2017, the landlord attended to the matter. It hired a plumber to assess the situation and as well, attend to what the plumber described as a “constantly running” toilet. The plumber recommended replacing the toilet and did so at a cost of \$414.31 in June 2017.

Analysis

The Toilet

The tenant was responsible for replacing the toilet tank top. I accept her testimony that her efforts to do so were thwarted by the lack of identification of the toilet type, that she asked the property manager for information about the toilet but got none and that she could have replaced the top, once identified, for about \$50.00.

Under s. 32 of the *Act* a tenant is responsible for the repair of damage occurring during the tenancy.

At the same time a landlord is responsible for mitigating its loss. In this case, I find that the landlord failed to mitigate its loss by providing the tenant with identification of the brand or type of toilet, thus allowing her to order the required top. In my view it would have been a straightforward piece of information. The landlord had only recently, in 2014, renovated the bathroom. The record of cost and expenses, including the purchase of the toilet, would have been relatively recent records and should not have been difficult to obtain.

I accept the tenant’s evidence that a new top would have cost about \$50.00 and I award the landlord \$50.00 for this item.

The Security Deposit

Section 38 of the *Act* provides that once a tenancy has ended and once the tenant has provided her landlord with her forwarding address in writing, the landlord must, within fifteen days, either repay the deposit money to the tenant or make an application for dispute resolution to keep all or a portion of it.

The landlord has failed to do so here. The tenant provided a forwarding address in an email in September 2016. The parties were receiving and sending emails to each other in the ordinary course of their relationship. The email containing the tenant's forwarding address thus complies with the "in writing" requirement under the *Electronic Transactions Act*, SBC 2001, c. 10.

The tenant is entitled to recover double the deposit; the amount of \$1450.00, plus the \$100.00 filing fee for this application.

As the landlord's claim resulted from its failure to take steps to mitigate its loss, I decline to award it recovery of its filing fee.

Conclusion

The tenant is entitled to a monetary award totalling \$1550.00, the landlord to \$50.00. The tenant will have a monetary order against the landlord, the respondent numbered company, in the amount of \$1500.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 11, 2017

Residential Tenancy Branch