



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS Affordable Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's 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 the rental unit, 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 June 02, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on June 13, 2017 were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 26, 2017 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on October 25, 2017. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On November 03, 2017 the Tenants submitted 19 photographs the Residential Tenancy Branch. The male stated that this evidence was not served to the Landlord. As the evidence was not served to the Landlord, it was not 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.

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?

Background and Evidence

The female Tenant stated that she moved into the rental unit on April 01, 2013 after entering into a written tenancy agreement with a different management company. She stated that after her co-tenant moved out of the rental unit she and the male Tenant entered into a new written tenancy agreement with the same management company, for a tenancy that began on August 01, 2013.

The Agent for the Landlord stated that his management company was not managing this property on August 01, 2013, but he agrees that this tenancy began on August 01, 2013 on the basis of the tenancy agreement that was submitted in evidence.

The Landlord and the Tenants agree that:

- a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 was paid;
- a condition inspection report was completed on August 01, 2013;
- this tenancy ended on May 17, 2017;
- a condition inspection report was completed on June 01, 2017; and
- the Tenants provided a forwarding address, in writing, on June 01, 2017.

The Landlord is seeking compensation, in the amount of \$23.50, for replacing an access fob and a mail key that were not returned at the end of the tenancy. The male Tenant agreed that these items were not returned to the Landlord. The Agent for the Landlord stated that \$23.50 is the standard cost of replacing those items, although he stated no evidence was submitted to establish these are the standard costs.

The Landlord is seeking compensation, in the amount of \$150.00, for painting one bedroom in the rental unit. The Agent for the Landlord stated that the entire rental unit was repainted at the end of the tenancy but one bedroom needed an additional coat of paint because the Tenants had repainted the bedroom a dark colour. The Landlord is seeking compensation for the costs associated to cover the dark colour.

The female Tenant stated that the bedroom was painted grey prior to August 01, 2013. She stated that a former agent for the previous management company gave the Tenants to paint the bedroom, providing it was painted a neutral colour.

The Agent for the Landlord stated that he does not know when the bedroom was painted by the Tenant.

The Agent for the Landlord and the Tenant agree that there is a term in the addendum to the tenancy agreement that requires the Tenant to obtain written permission from the Landlord prior to painting the rental unit. The addendum was submitted in evidence.

The Landlord is seeking compensation, in the amount of \$305.00, for cleaning the carpet in the rental unit.

The Agent for the Landlord stated that the carpet looked clean at the end of the tenancy but that it smelled of urine.

The female Tenant stated that the Tenants rented a carpet cleaner and they cleaned the carpet at the end of the tenancy. She stated that their dog did not urinate on the carpet and that the carpet did not smell at the end of the tenancy.

The Landlord submitted a copy of an invoice for cleaning the carpet, in the amount of \$315.00, which included a neutralizing and deodorizing treatment. There is a note on the invoice that reads "Please give a couple of days if the odor persists please use the Power Air essential you mentioned worked well for you before ". The male Tenant suggested that this may simply be a standard statement that is provided whenever a deodorizing treatment is applied.

The Landlord is seeking compensation, in the amount of \$60.00, for cleaning the rental unit. The Agent for the Landlord stated that the unit needed some additional cleaning at the end of the tenancy.

The female Tenant stated that the rental unit was left in clean condition at the end of the tenancy.

Analysis

On the basis of the undisputed evidence I find that the female Tenant was occupying this rental unit, under a separate tenancy agreement, between April 01, 2013 and July

31, 2013. On the basis of the undisputed evidence I find that the Tenants entered into a new tenancy agreement with the previous management company on August 01, 2013.

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.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to return a mail key and an access fob. In addition to establishing that a tenant failed to comply with the *Act*, a landlord must also accurately establish the cost of repairing the “damage” caused by a tenant whenever compensation for damages is being claimed.

I find that the Landlord failed to establish the true cost of replacing the access fob and key. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that corroborates the Agent for the Landlord’s testimony that there is a standard fee of \$23.50 for replacing the items. When evidence of costs is available, or should be available with reasonable diligence, I find that a party seeking compensation for those costs has a duty to present the receipts or invoices. As the true costs have not been established, I dismiss the claim for replacing the fob and key.

On the basis of the testimony of the female Tenant and the absence of evidence to the contrary, I find that sometime prior to August 01, 2013 the female Tenant painted one of the bedrooms. On the basis of the testimony of the female Tenant and the absence of evidence to the contrary, I find that she did so with verbal permission from an agent for the company that was managing the unit at that time.

On the basis of the undisputed evidence, I find that there is a term in the addendum to the tenancy agreement that was submitted in evidence which requires the Tenants to obtain written permission from the Landlord prior to painting the rental unit. As this tenancy agreement did not come into force until after the bedroom was painted prior to August 01, 2013, I find that the Tenants were not required to comply with this term when they painted the bedroom.

As there is no evidence that there was a term in the female Tenant's first tenancy agreement that required her to obtain written permission from the Landlord prior to painting the rental unit, I cannot conclude that she needed written permission to paint the bedroom prior to August 01, 2013.

As the Landlord has submitted insufficient evidence to establish that the female Tenant was required to have written permission to paint the rental unit prior to August 01, 2013 or that establishes that she did not have permission from the previous management company to paint the bedroom, I dismiss the Landlord's claim for painting the bedroom.

I favour the testimony of the Agent for the Landlord, who stated that the carpet had an odour of urine, over the testimony of the female Tenant, who stated that the carpet did not smell at the end of the tenancy. In reaching this conclusion I was heavily influenced by the carpet cleaning invoice that was submitted in evidence. I find the fact that the Landlord paid to have the carpet deodorized serves to corroborate the testimony of the Agent for the Landlord. I further find that the reference on the invoice regarding the odor persisting serves indicates an odor was present at the time of cleaning.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the carpet in clean condition. I therefore find that the Landlord is entitled to the full amount of the claim for cleaning the carpet, which is \$305.00.

I find that the Landlord submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy, as is required by section 37(2) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Landlord's claim that the unit required additional cleaning or that refutes the Tenants' submission that it was left in clean condition. I therefore dismiss the Landlord's claim for cleaning the rental unit.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the Tenants did not sign the report that was completed at the end of the tenancy and they indicated they did not agree that the condition inspection report accurately reflects the condition of the rental unit at the time of that inspection, I find that the report is of limited evidentiary value.

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 \$405.00, which includes \$305.00 for carpet cleaning 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 \$405.00 from the Tenants' security deposit in full satisfaction of this monetary claim.

The Landlord must return the remaining security deposit and pet damage deposit, in the amount \$2,095.00, and I grant the Tenants 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: November 21, 2017

Residential Tenancy Branch