



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPN, MNDC, MND, MNR, MNSD, FF, SS

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 a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, for a substitute service order, 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 Tenant did not request an alternate method of serving the Tenants and her request for a substitute service order is, therefore, not being considered.

The Landlord stated that the Tenants did not leave her a forwarding address at the end of this tenancy; however she was able to locate a new address for the Tenants through mutual acquaintances, which she used as the service address on this Application for Dispute Resolution.

The Landlord stated that on June 09, 2017 she sent the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to both Tenants, via registered mail, at the service address noted on the Application. The Landlord submitted a Canada Post receipt that corroborates two packages were sent by registered mail.

The Landlord stated that she checked the Canada Post website, which indicated that the male Tenant signed for receipt of both of the packages she sent on June 09, 2017.

I checked the Canada Post website and confirmed that a person with the same surname as the male Tenant signed for both packages.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no evidence that either Tenant were personally served with the Application for Dispute Resolution and associated documents, I cannot conclude that these documents were served to either party in accordance with section 89(1)(a) of the *Act*.

I find there is insufficient evidence to conclude that the Application for Dispute Resolution and associated documents was served to the female Tenant by registered mail. Even if I concluded that the evidence was sufficient to establish that the male Tenant was residing at the service address on the Application for Dispute Resolution, on the basis that he received the items that were mailed to that address, I cannot conclude that the female Tenant was also living there. I find it entirely possible that the female Tenant was no longer living with the male Tenant in June of 2017. I therefore cannot conclude that she was served these documents in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Tenant in an alternate manner. I therefore I find that neither Tenant was served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the female Tenant received the Application for Dispute Resolution and associated documents. I therefore cannot conclude that these documents have been sufficiently served to her pursuant to sections 71(2) of the *Act*.

On the basis of the testimony of the Landlord and the Canada Post receipt submitted in evidence, I find that the Application for Dispute Resolution and associated documents that were sent to the service address, by registered mail, were received by the male Tenant. I therefore find that these documents have been sufficiently served to the male Tenant pursuant to sections 71(2) of the *Act*.

The Landlord was advised that the female Tenant may not have been properly served with the Application for Dispute Resolution and associated documents for the purposes of proceeding with the Landlord's application for a monetary Order. The Landlord was provided with the opportunity to either withdraw the application for a monetary Order or to proceed with the application for a monetary Order, with the understanding that the Tenant would not be named on the monetary Order if I determined the female Tenant had not been properly served. The Landlord opted to proceed with the hearing with the understanding the female Tenant may not be named on the monetary Order.

As I have determined that there is insufficient evidence to show that the female Tenant was properly served with, or received, the Application for Dispute Resolution and associated documents, I dismiss the Landlord's application for a monetary Order naming this party.

As I have determined that the male Tenant received the Application for Dispute Resolution and associated documents, I consider it appropriate to consider the Landlord's application for a monetary Order naming this party.

Issue(s) to be Decided

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

Background and Evidence

The Landlord stated that:

- the tenancy began on December 01, 2016;
- the Tenants agreed to pay monthly rent of \$900.00 by the first day of each month;

- the Tenants paid a security deposit of \$450.00;
- the Tenants paid a pet damage deposit of \$150.00;
- on March 16, 2017 the Tenants gave written notice to end the tenancy, effective April 16, 2017; and
- the rental unit was vacated on April 12, 2017..

The Landlord is seeking compensation, in the amount of \$150.00, for replacing a bi-fold mirror closet door that was broken during the tenancy. The Landlord submitted an internet advertisement that supports the amount of this claim.

The Landlord is seeking compensation, in the amount of \$9.97, for purchasing a tension rod. She stated that this rod is for a curtain that is covering the closet until she can replace the closet door that was broken during the tenancy. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$17.89, for replacing the lock on the rental unit. The Landlord stated that the lock needed to be replaced because the Tenants did not return the keys to the unit. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$8.09, for replacing the battery in the doorbell. The Landlord stated that the battery in the door bell was working properly at the start of the tenancy and that it was not working at the end of the tenancy. The Landlord submitted a receipt to show this expense was incurred.

The Landlord is seeking compensation, in the amount of \$435.14, for cleaning the rental unit. This claim includes \$45.14 for cleaning supplies and \$390.00 for the time she spent cleaning the unit. The Landlord stated that the unit required cleaning at the end of the tenancy. The Landlord stated that she spent 26 hours cleaning the rental unit. The Landlord submitted a receipt to show that she spent \$45.14 for cleaning expenses.

The Landlord is seeking compensation, in the amount of \$47.58, for purchasing a shop vacuum. The Landlord stated that the rental was so dirty she needed a shop vacuum to remove various items from the floor. The Landlord submitted a receipt to show that this expense was incurred.

The Landlord is seeking compensation, in the amount of \$105.00, for cleaning the carpet in the rental unit. The Landlord stated that the carpet required cleaning at the end of the tenancy. The Landlord submitted a receipt to show that this expense was incurred.

The Landlord is seeking compensation, in the amount of \$30.00, for disposing of personal property and furniture the Tenant left in the rental unit. She is also claiming \$6.00 plus tax for the cost of purchasing two straps that were needed to secure the property that was taken to the landfill. The Landlord submitted receipts to show that these expenses were incurred.

The Landlord is seeking compensation, in the amount of \$4.60, for replacing lightbulbs in the rental unit. The Landlord stated that the several bulbs burned out during the tenancy, which the Tenants did not replace, and that the Tenants removed the light bulb from the oven. The Landlord submitted a receipt to show that this expense was incurred.

The Landlord is seeking compensation for of \$1,350.00 for unpaid rent in April of 2017 and lost revenue for May of 2017. In support of this claim the Landlord stated that:

- no rent was paid for April of 2017;
- the rental unit had a very strong smell of animal feces at the end of the tenancy;
- she was unable to re-rent the unit in May or April of 2017 due to the smell;
- the unit was not suitable to rent to another person until she had treated the carpet with a variety of cleaning products and aired out the unit for the entire month of May;
- she advertised the unit sometime near the end of May; and
- she was able to find a new tenant for June 15, 2017.

Analysis

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.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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 repair the closet door that was broken at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the door, which appears to be \$150.00, and \$9.97 for the tension rod that is being used to temporarily cover the closet.

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 the keys at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of replacing the lock, which is \$17.89.

I find that batteries in doorbells typically last for many years. Given the lifespan of these batteries, I find that this expense should be considered normal wear and tear, for which the Tenant is not responsible. I therefore dismiss the claim for replacing the battery.

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 leave the unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for the time she spent cleaning the rental unit plus the cost of cleaning supplies, in the amount of \$435.14.

Section 67 of the *Act* authorizes me to grant compensation to a landlord if the landlord suffers a loss as a result of the tenant breaching the *Act*. While I accept that the Landlord purchased a shop vacuum to assist with cleaning the rental unit, I find that the purchase cannot truly be considered a loss, as she still possesses that piece of equipment which she may be able to use in the future. I therefore dismiss her claim for purchasing a shop vacuum.

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 leave the carpet in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for cleaning the carpet, in the amount of \$105.00.

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 leave remove all of the property from the rental unit. I therefore find that the Landlord is entitled to compensation for the cost of disposing of the property, in the amount of \$30.00, plus \$6.72 for the cost of straps used to secure the property taken to the landfill.

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 leave all the light bulbs in proper working order. I therefore find that the Landlord is entitled to compensation for the cost of replacing lightbulbs, in the amount of \$4.60.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

Section 53 of the *Act* stipulates that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the true effective date of the written notice to end the tenancy the Tenants provided to the Landlord on March 16, 2017, was April 30, 2017.

As the written notice did not end the tenancy until April 30, 2017, I find they were obligated to pay rent of \$900.00 for April of 2017. On the basis of the undisputed evidence I find that the Tenants did not pay rent for April of 2017 and I therefore find that they still owe \$900.00 to the Landlord for rent.

On the basis of the undisputed evidence I find that the Landlord lost revenue during the month of May because the Tenants did not properly clean the unit at the end of the tenancy and it took the Landlord several weeks to remove the smell from the unit. While I accept that the lost \$900.00 in revenue for May of 2017, I am unable to award that amount, as the Landlord has only claimed \$450.00. I therefore award the full amount of her claim for lost revenue, which is \$450.00.

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 \$2,209.32, which includes \$2,109.32 in damages 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 the Tenants' security/pet damage deposit of \$600.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,609.32. In the event the male Tenant does not voluntarily comply with this Order, it may be served on the male 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: November 19, 2017

Residential Tenancy Branch