



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

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, to keep the Tenants' security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on January 09, 2019 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to each Tenant, via registered mail, at the forwarding address provided by the Tenant with the initials "N.H." The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

As the aforementioned documents were properly served to the Tenants, the hearing proceeded in the absence of the Tenants and the evidence was accepted as evidence for these proceedings.

Preliminary Matter

The Tenant stated that he incorrectly recorded his name on the Application for Dispute Resolution and he applied to amend the Application to reflect his correct name. I find that the Tenants knew, or should have known, that this was merely an administrative error and I therefore amended the Application to correctly reflect the Landlord's name.

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 Landlord stated that:

- the tenancy began on January 15, 2018, although the Tenants moved in five days early;
- the tenancy ended on December 31, 2018;
- the Tenants agreed to pay monthly rent of \$2,500.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,250.00;
- he received a forwarding address for the Tenants on January 09, 2019, via text message;
- a condition inspection report was not completed at the beginning of the tenancy, although the unit was jointly inspected on December 31, 2017;
- a condition inspection report was not completed at the end of the tenancy, although the unit was jointly inspected on December 31, 2018;
- the Tenants did not provide him with written authority to retain any portion of the security deposit; and
- he did not return any portion of the security deposit.

The Landlord is seeking compensation for repairing the laminate flooring in the rental unit. He stated that the flooring was new at the start of the tenancy and about ten boards were damaged during the tenancy. He submitted photographs to corroborate his claim that the flooring was damaged. He stated that he obtained a verbal estimate for repairing the damage, in the amount of \$2,000.00.

The Landlord is seeking compensation for replacing the carpet in the rental unit. He stated that the carpet was new at the start of the tenancy and it was badly stained at the end of the tenancy. He submitted photographs to corroborate his claim that the carpet was damaged. He stated that he obtained a verbal estimate for replacing the carpet, in the amount of \$800.00.

The Landlord stated that he has not yet repaired the damaged flooring. He stated that he was unable to obtain an estimate for the cost of repairing the laminate flooring or replacing the carpet as the company he contacted would not provide him documentation until the work had been completed.

The Landlord is seeking compensation for replacing a sofa that was provided with the tenancy. He stated that the sofa was new at the start of the tenancy and it was discarded by the Tenants during the tenancy. He stated that he paid approximately \$1,000.00 for the sofa but he was unable to locate his receipt. He did not provide an estimate for replacing the sofa.

The Landlord is seeking compensation for replacing the access fob that provides access to the front door of the residential complex. He stated that the fob was not working when it was returned at the end of the tenancy. He stated that it will cost \$100.00 to replace the fob.

Analysis

On the basis of the undisputed evidence I find that the Tenants paid a security deposit of \$1,250.00; that the tenancy ended on December 31, 2018; that the Landlord did not have written authority to retain any portion of the Tenants' security deposit; and that the Landlord did not return any portion of the security deposit.

On the basis of the undisputed evidence I find that the Landlord received a forwarding address from one of the Tenants, via text message, on January 09, 2019.

In determining that the Landlord received the Tenant's forwarding address, via text message, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that a text message meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that a person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record is accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As text messages are capable of being retained and used for further reference, I find that a text message can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Act* specifies a variety of ways that documents, other than documents referred to in section 89 of the *Act*, must be served. Service by text message is not one of methods of serving documents included in section 88 of the *Act*.

Section 71(2)(c) of the *Act* authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the *Act* is sufficiently given or served for purposes of this *Act*. As the Landlord acknowledged receiving the text message in which the Tenant provided a forwarding address, I find that the Landlord was sufficiently served with the Tenant's forwarding address.

Section 23(4) of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy. On the basis of the undisputed evidence I find that the rental unit was jointly inspected at the start of the tenancy but that the Landlord did not comply with section 23(4) of the *Act*, as he did not complete a condition inspection report.

Section 24(2)(c) of the *Act* stipulates that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. As the Landlord did not complete a condition inspection report at the start of the tenancy, I find that his right to claim against the security deposit for damage to the rental unit is extinguished, pursuant to section 24(2)(c) of the *Act*.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 24(2)(c) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the security deposit and more than fifteen days has passed since the Landlord received the forwarding address and the tenancy ended.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with section 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit,

pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenants.

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 the Tenants failed to repair the laminate flooring that was damaged during the tenancy;; to replace the carpet that was damaged during the tenancy; and to replace the sofa that was discarded during the tenancy; and to repair the access fob that stopped working during the tenancy. I therefore find that the Tenants were obligated to repair the damaged items, to replace the missing sofa, and to replace the carpet..

In addition to establishing that a tenant damaged a rental unit, 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 repairing the damage to the rental unit and the true cost of replacing the sofa. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it will cost \$\$2,000.00 to repair the laminate floor; that it will cost \$800.00 to replace the carpet; that the sofa was purchased for \$1,000.00; or that it will cost \$100.00 to replace the access fob.

When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. In adjudicating this matter I have placed little weight on the Landlord's testimony that the company he contacted to repair the flooring would not provide him with an estimate. Given that I regularly see estimates in support of claims for compensation, I find that the Landlord could have obtained estimates for the repairs/replacement, although he may have had to contact another company.

As the Landlord has failed to establish the true cost of repairing the laminate floor; replacing the carpet; replacing the sofa; and repairing the access fob, I dismiss his application to recover those costs.

Although the Landlord did not establish the costs of his repairs, I find that he did establish that the Tenants damaged his rental unit. I therefore 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 Tenants are entitled to double the return of the SD)

The Landlord has established a monetary claim, in the amount of \$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 \$100.00 from the Tenants' security deposit.

As I have concluded that the Tenant is entitled to the return of double the security deposit (\$2,500.00), I find that this must be returned, less the \$100.00 the Landlord is entitled to retain.

Based on these determinations I grant the Tenants a monetary Order for the balance \$2,400.00. 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: May 02, 2019

Residential Tenancy Branch