



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-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 unpaid rent, for a monetary Order for damage to the rental unit or utilities; 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 September 14, 2020 the Dispute Resolution Package and the evidence the Landlord submitted with the Application was sent to the Tenant, via registered mail. The Tenant stated that he received all of these documents, but he did not receive the video evidence the Landlord submitted to the Residential Tenancy Branch. The Agent for the Landlord stated that the video evidence was not served to the Tenant.

As the Tenant acknowledged receiving the aforementioned documents, the evidence was accepted as evidence for these proceedings. As the video evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

On November 10, 2020 the Landlord submitted 2 additional pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via email, on November 10, 2020. The Tenant acknowledged receiving this evidence and declared that he has had sufficient time to consider it. As such, this evidence was accepted as evidence for these proceedings.

On November 09, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on

November 09, 2020. The Landlord acknowledged receiving this evidence and declared that he has had sufficient time to consider it. As such, this evidence 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. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2019;
- the tenancy ended on August 31, 2020;
- the Tenant agreed to pay monthly rent of \$2,600.00 by the first day of each month;
- the Tenant paid a security deposit of \$1,300.00;
- the Tenant was required to pay for utilities during the tenancy;
- utility charges of \$382.96 were incurred during this tenancy; and
- the Landlord can withhold \$382.96 from the Tenant's security deposit in compensation for utility charges.

The Landlord is seeking compensation, in the amount of \$200.00, for cleaning the rental unit.

The Landlord submitted a photograph of two items inside a refrigerator. The Landlord stated that this photograph was taken of the refrigerator on August 31, 2020. The Landlord submitted no other photographs to support the claim that the unit required cleaning at the end of the tenancy.

The Tenant stated that the rental unit did not require cleaning at the end of the tenancy. The Tenant stated that when the unit was inspected on August 31, 2020 there were a few items in the refrigerator; that the Landlord asked him to remove the items; that he

did remove the items; and the photograph submitted in evidence by the Landlord does not represent the items that were in the refrigerator on the day of the final inspection.

The Tenant submitted several photographs of the rental unit, which the Tenant stated were taken during the final condition inspection on August 31, 2020, and that they reflect the condition of the rental unit at the end of the tenancy. The Agent for the Landlord stated that the photographs the Tenant submitted were taken at the start of the tenancy, with the exception of the one photograph in which the Landlord can be seen, which was taken on August 31, 2020.

The Landlord submitted a letter from the current tenant of the rental unit, in which the current tenant declared that the unit requires cleaning.

The Landlord submitted a copy of an email exchange, dated September 11, 2020, from a cleaning company. In the exchange, at 10:34 a.m. the Landlord requested a quote for cleaning a two bedroom and at 12:58 p.m. the cleaning company provided an estimate of \$200.00. The Landlord stated that the unit was inspected by the author of the email, although there is no indication of that in the email.

The Landlord is seeking compensation, in the amount of \$350.00, for repairing drywall in rental unit.

The Landlord submitted a photograph of a wall in the rental unit, which has been partially repaired.

The Tenant stated that the damaged area of the wall was in poor condition at the start of the tenancy; it was damaged during the tenancy; he initiated the drywall repair shown in the Landlord's photograph; and that he did not paint or fully sand the repair.

The Landlord submitted an estimate for the repair, in the amount of \$350.00. The Tenant stated that he believes the estimate is excessive. This estimate includes replacing a piece of drywall and painting the repaired area.

Analysis

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. In these circumstances, the burden of proof rests with the Landlord.

As the Tenant agreed that the Landlord can retain \$382.96 from the Tenant's security deposit in compensation for utility charges, I find that Landlord is entitled to retain this amount.

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*.

Residential Tenancy Branch Policy Guideline #1 establishes that a Residential Tenancy Branch Arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Even if I accepted the Landlord's testimony that there were two items left in the refrigerator at the end of the tenancy, as shown in the photograph submitted by the Landlord, I would not conclude that this single photograph establishes the unit was not left in reasonably clean condition.

In determining 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, I was heavily influenced by the absence of any other photographs from the Landlord that would support this claim and/or that give me the opportunity to assess the cleanliness of the unit at the end of the tenancy.

In adjudicating the claim for cleaning, I have placed no weight on the letter from the current tenant of the rental unit, in which the current tenant declared that the unit requires cleaning. Although the current tenant may not be satisfied with the cleanliness of the unit, I cannot rely on that individual's personal opinion when determining reasonable standards of cleanliness.

In adjudicating the claim for cleaning, I have placed no weight on the email exchange, dated September 11, 2020, between the Landlord and a cleaning company. Although the Landlord declared that the cleaning company viewed the unit prior to providing this email, the fact the quote was requested at 10:34 a.m. and the quote was provided at 12:58 p.m. on the same date, causes me to question the credibility of the Landlord in

this regard. Of equal importance, there is nothing in the email exchange that would cause me to conclude that the cleaning company viewed the unit prior to providing the quote.

Even if the cleaning company viewed the unit prior to providing the quote, I find there is no evidence that they viewed it prior to the new tenant moving into the unit on September 01, 2020.

As the Tenant submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy, I dismiss the Landlord's claim for cleaning.

On the basis of the photograph submitted in evidence and the testimony of the Tenant, I find that the Tenant did not comply with section 37(2) of the *Act*, when he did not fully repair the drywall that was damaged during the tenancy. Although the Tenant initiated repairs, I find that they were not fully completed.

I therefore find that the Landlord is entitled to compensation of \$350.00 to repair the drywall. Although the Tenant submits that the estimate for the repair is excessive, he submitted no evidence to corroborate that submission and I find it reasonable to rely upon the written estimate submitted by the Landlord.

I find that the Landlord's Application for Dispute Resolution has some 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 \$832.96, which includes \$382.96 for utilities; \$350.00 for repairing drywall; 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 \$832.96 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlord has not established a right to retain the Tenant's entire security deposit, I find that the Landlord must return the remaining \$467.04, 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: November 19, 2020

Residential Tenancy Branch