



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-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, 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, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 08, 2021 the Dispute Resolution Package was personally served to the Tenant. The Tenant acknowledged receipt of these hearing documents.

In September of 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant with the Dispute Resolution Package on October 08, 2021. The Tenant acknowledged receiving evidence on October 08, 2021.

During the hearing the Landlord referred to photographs submitted in evidence in September of 2021, at which point the Tenant stated that he had not been served with photographic evidence. After the Tenant denied being served with photographs as evidence, the Agent for the Landlord acknowledged that the photographs he submitted to the Residential Tenancy Branch in September were not served to the Tenant as evidence for these proceedings.

As the photographs submitted to the Residential Tenancy Branch in September of 2021 were not served to the Tenant as evidence for these proceedings, the parties were advised that they would not be considered as evidence for these proceedings.

During the hearing the Landlord referred to receipts/invoices submitted in evidence in September of 2021, at which point the Tenant stated that he had not been served with any invoices. After the Tenant denied being served with invoices as evidence, the Agent for the Landlord acknowledged that the invoices/receipts he submitted to the Residential Tenancy Branch in September of 2021 were not served to the Tenant.

As the receipts/invoices submitted to the Residential Tenancy Branch in September of 2021 were not served to the Tenant, the parties were advised that they would not be considered as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

After I realized highly relevant evidence had not been served to the Tenant, the Landlord was given the option of withdrawing the Application for Dispute Resolution and proceeding at a later date, which would provide him with the opportunity to properly serve evidence to the Tenant.

The Landlord stated that he did not wish to withdraw the Application for Dispute Resolution and that he wished to proceed with the hearing even though much of his evidence has been excluded.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, to compensation for costs related to regaining possession of the rental unit, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant and his former wife entered into a written tenancy agreement with the Landlord;
- the tenancy began on November 01, 2018;
- the Tenants agreed to pay monthly rent of \$2,900.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,450.00;
- the rental unit was vacated on July 30, 2021;
- the rental unit was vacated after Bailiffs removed the female Tenant from the rental unit; and
- the Tenants did not provide the Landlord with a forwarding address at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$478.80, for cleaning the rental unit. The Agent for the Landlord stated that the rental unit required a significant amount of cleaning after it was vacated on July 30, 2021. The Tenant stated that he agrees cleaning was required and he agrees to pay the Landlord \$478.80 in compensation for cleaning the unit.

The Landlord is seeking compensation, in the amount of \$1,000.00, for replacing the carpet in the rental unit. The Agent for the Landlord stated that the carpet needed to be replaced because it was extremely dirty and could not be cleaned. The Tenant stated that he has not lived in the rental unit for an extended period of time and he has not viewed the carpet since June of 2019.

The Landlord is seeking compensation, in the amount of \$189.28, for repairing blinds. The Agent for the Landlord lacing the carpet in the rental unit. The Landlord stated that the blinds were damaged in several places. The Tenant stated that he did not view the blinds at the end of the tenancy so he does not know if they were damaged.

The Landlord is seeking compensation, in the amount of \$2,100.00, for repainting the unit. The Agent for the Landlord stated that the walls were damaged and dirty. The Tenant stated that he did not view the walls at the end of the tenancy so he does not know if they were damaged.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing an access fob. The Agent for the Landlord stated that the fob was broken at the end of the tenancy. The Tenant stated that he does not know if the access fob was damaged at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$300.00, for a moving fee. The Agent for the Landlord stated that when this tenancy began the Strata Corporation charged a fee of \$300.00 for moving into the rental unit. He stated that this fee has not been paid.

The Tenant stated that he has paid all of the fees that were required when he moved into the unit.

The Landlord is seeking compensation, in the amount of \$3,739.81, for costs related to having the female Tenant removed from the rental unit. The Landlord stated that on July 20, 2021 he received an Order of Possession for the rental unit, the Order of Possession was served to the female Tenant on July 20, 2021, the Order of Possession was filed with the Supreme Court of British Columbia, and a bailiff removed the female Tenant from the unit on July 30, 2021.

The Landlord is seeking compensation, in the amount of \$70.39, for mailing costs he incurred as a result of participating in these proceedings.

The Landlord is seeking compensation for unpaid rent in the amount of \$12,100.00.

The Landlord and the Tenant agree that a total of \$22,000.00 in rent was paid in 2020, leaving a balance due for that year of \$12,800.00.

The Landlord and the Tenant agree that a total of \$21,000.00 in rent was paid for the period between January 01, 2021 and July 31, 2021, leaving a credit due to the Tenant of \$700.00.

The Landlord is claiming \$2,900.00 in lost revenue from August of 2021. The Agent for the Landlord stated that the rental unit could not be re-rented in August due to the poor condition of the rental unit.

At the hearing I told the Agent for the Landlord that I would not be considering the claim for lost revenue, as that claim was not clearly outlined in the Application for Dispute Resolution. Upon reviewing the Application for Dispute Resolution, I find that the Landlord clearly claimed lost revenue for August of 2021 and, as such, I will be considering that claim.

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.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the Tenant(s) failed to comply with section 37(2) of the *Act* when the Tenant(s) failed to leave the rental unit in reasonably clean condition at the end of the tenancy. As the Tenant agreed to compensate the Landlord \$478.80 for cleaning the unit, I find that the Landlord is entitled to that amount.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the Tenant(s) failed to comply with section 37(2) of the *Act* when the Tenant(s) failed to leave the carpet in reasonably clean condition at the end of the tenancy.

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 replacing the carpet. 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 it cost \$1,000.00 to replace the carpets. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to submit those receipts as evidence and to serve them to the other party.

As no evidence has been accepted to corroborate the Landlord's claim that it cost \$1,000.00 to replace the carpet, I find the Landlord has failed to establish the true cost of replacing the carpet. I therefore dismiss the Landlord's claim for replacing the carpet.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the Tenant(s) failed to comply with section 37(2) of the *Act* when the Tenant(s) failed to repair the blinds that were damaged during the tenancy.

I find that the Landlord failed to establish the true cost of repairing the blinds. 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 it cost \$189.28 to repair the blinds. As previously stated, I find that the Landlord has an obligation to provide proof of such costs when it is feasible to do so.

As no evidence has been accepted to corroborate the Landlord's claim that it cost \$189.28 to repair the blinds, I find the Landlord has failed to establish the true cost of repairing the blinds and I dismiss the claim for that repair.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the Tenant(s) failed to comply with section 37(2) of the *Act* when the Tenant(s) failed to repair the walls that were damaged and dirty at the end of the tenancy.

I find that the Landlord failed to establish the true cost of painting the walls. 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 it cost \$2,100.00 to paint the walls. As previously stated, I find that the Landlord has an obligation to provide proof of such costs when it is feasible to do so.

As no evidence has been accepted to corroborate the Landlord's claim that it cost \$2,100.00 to paint the unit, I find the Landlord has failed to establish the true cost of painting the unit and I dismiss the claim for that expense.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the Tenant(s) failed to comply with section 37(2) of the *Act* when the Tenant(s) failed to repair the access fob that was damaged during the tenancy.

I find that the Landlord failed to establish the true cost of replacing the access fob. 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 it cost \$100.00 to replace the fob. As has been stated, I find that the Landlord has an obligation to provide proof of such costs when it is feasible to do so.

As no evidence has been accepted to corroborate the Landlord's claim that it cost \$100.00 to replace the access fob, I find the Landlord has failed to establish the true cost of replacing the fob and I dismiss the claim for that expense.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants did not pay a move-in fee that was required at the start of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony it was not paid or that refutes the Tenant's testimony that all fees that were required at the start of the tenancy were paid.

Had the Tenants failed to pay a move-in fee when this tenancy began in 2018, I would expect to see some sort of effort to collect the fee prior to the end of the tenancy. The Agent for the Landlord was unable to direct me to any documentary evidence that would support his submission this fee has not been paid.

As the Landlord has failed to establish that the Tenant still owes a move-in fee, I dismiss the claim for that fee.

On the basis of the undisputed testimony of the Agent for the Landlord, I find that the female Tenant failed vacate the rental unit when an Order of Possession was served to her on July 20, 2021. I therefore find that the Landlord incurred court fees and bailiff fees when he enforced the Order of Possession.

I find that the Landlord failed to establish the true cost of enforcing the Order of Possession. 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 it cost \$3,739.81 for court and bailiff fees. As has been stated, I find that the Landlord has an obligation to provide proof of such costs when it is feasible to do so.

As no evidence has been accepted to corroborate the Landlord's claim that it cost \$3,739.81 to enforce an Order of Possession, I find the Landlord has failed to establish those costs and I dismiss that claim.

Pursuant to section 67 of the *Act*, parties are only entitled to recover costs for damages that are directly related to breaches of the *Act* or the tenancy. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the *Act*. I do not have authority to award any other costs related to participating in a dispute resolution proceeding and I therefore dismiss the Landlord's claim to recover mailing costs.

On the basis of the undisputed testimony, I find that the Tenant owes the Landlord \$12,800.00 in rent for 2020 and that a \$700.00 credit is due to the Tenant for an overpayment of rent for the period January 01, 2021 and July 31, 2021. I therefore find that the Tenant owes the Landlord \$12,100.00 in unpaid rent.

On the basis of the evidence presented at the hearing, I find that the rental unit was left in poor condition at the end of the tenancy. I find that the need to repair and clean the unit likely contributed to the Landlord's inability to re-rent the unit for August 01, 2021. I therefore find that the Landlord is entitled to compensation for lost revenue for August of 2021, in the amount of \$2,900.00.

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 \$15,578.80, which includes \$478.80 for cleaning, \$12,100.00 in unpaid rent, \$2,900.00 for lost revenue from August of 2021 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 Tenant's security deposit of \$1,450.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$14,128.80. In the event the Tenant does not voluntarily comply with this Order, it may be served on the 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: February 01, 2022

Residential Tenancy Branch