



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, 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 damage to the rental unit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. The male Tenant repeatedly disrupted the hearing by interrupting while other parties were speaking. The male Tenant was repeatedly advised to refrain from interrupting others and he was repeatedly advised that he would be given a full opportunity to present his evidence once the other party had finished speaking.

The Landlord submitted evidence to the Residential Tenancy Branch on November 02, 2010, February 17, 2011, and February 18, 2011. The Agent for the Landlord #2 stated that this evidence was served to the Tenants. After some initial confusion the male Tenant acknowledged receipt of the evidence submitted by the Landlord. This evidence was considered when determining the merits of this Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled compensation for damages to the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 09, 2010, that the parties had a written tenancy agreement that indicated the tenancy would begin on May 01, 2010, and that the Tenants were required to pay monthly rent of \$700.00 by the first day of each month.

The Landlord and the Tenant agree that a Condition Inspection Report was completed on April 09, 2010 and that the male Tenant signed the Condition Inspection Report.

The male Tenant stated that the Condition Inspection Report does not accurately reflect the condition of the rental unit at the beginning of the tenancy as he pointed out deficiencies to the rental unit that were not recorded on the Condition Inspection Report. The Tenant submitted no evidence to corroborate his statement that the Condition Inspection Report does not accurately reflect the condition of the rental unit at the beginning of the tenancy.

The Agent for the Landlord stated that this tenancy ended on October 25, 2010. The Tenants are not certain when the tenancy ended.

The Agent for the Landlord #1 stated that the caretaker of the residential complex posted a letter on the Tenants' door on October 21, 2010, in which the Tenants were advised that the rental unit would be inspected at 1:00 p.m. on October 25, 2010. No evidence was submitted to corroborate this statement

The Tenants contend that they never received the letter that was allegedly posted on their door on October 21, 2010 and that they were not, therefore, aware that the rental unit was being inspected on October 25, 2010.

The Landlord submitted a copy of the Condition Inspection Report that was completed by the caretaker or the residential complex, in the absence of the Tenants, on October 25, 2010. The Agent for the Landlord #1 stated that the Tenants were not given a second opportunity to inspect the rental unit at an alternate time.

The Landlord is seeking compensation, in the amount of \$60.00, for repairing and painting one wall in the living room. The Condition Inspection Report that was completed on April 09, 2010 indicates that the walls in the living room were in "fair" condition. The Agent for the Landlord #1 stated that at the end of the tenancy the trim around a door in the living room was missing, the drywall in the area where the trim had been needed repairing, and that the wall in the living room needed to be painted after the repairs were completed. The Landlord submitted photographs of the area around the door after repairs had been initiated but prior to the repairs being completed. The Agent for the Landlord #1 stated that caretaker spent approximately 4 hours painting and repairing this wall, for which the Landlord is seeking compensation of \$60.00.

The male Tenant stated that the trim around this door was missing at the start of the tenancy and that the wall in the living room that was repaired was not damaged during their tenancy.

The Landlord is seeking compensation, in the amount of \$200.00, for replacing a bedroom door. The Condition Inspection Report that was completed on April 09, 2010 indicates that the door in the bedroom was in "fair" condition. The Agent for the Landlord #1 stated that at the end of the tenancy there were several holes in the bedroom door and the door was coming apart. The Landlord submitted photographs of the door which show that it is significantly damaged. The Agent for the Landlord #1 stated that caretaker spent approximately 1 hour replacing the door. The Landlord

submitted a copy of a receipt that shows the Landlord paid \$96.29 plus tax to replace the door and \$55.00 plus tax to deliver the door.

The male Tenant stated that the most of the damage to the door was done prior to the start of this tenancy, although he acknowledges that at least two of the holes in the door occurred during this tenancy.

The Landlord is seeking compensation, in the amount of \$342.00, for cleaning the rental unit. The Agent for the Landlord #1 stated that the rental unit required significant cleaning at the end of the tenancy. The Landlord submitted photographs of the rental unit that show the fridge needed cleaning, the stove need cleaning, the bathtub needed cleaning, the balcony needed cleaning, and a few items were left in a closet. The Agent for the Landlord #1 stated that caretaker spent approximately 19 hours cleaning the rental unit.

The male Tenant stated that they cleaned most of the rental unit, although he agreed the photographs were a fair representation of the fridge, oven, and bathtub. He stated that the photograph of the balcony is not a photograph of his balcony at the end of this tenancy and the photograph of a cabinet with a missing counter top is not representative of how his cabinet looked at the end of his tenancy. The Tenant contends that it should not have taken nineteen hours to clean the rental unit.

No evidence was introduced from the individual who took these photographs at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$95.00, for cleaning the carpet at the end of the tenancy. The Landlord and the Tenant agree that the tenancy agreement requires the Tenants to have the carpet professionally cleaned at the end of the tenancy. The Landlord submitted a receipt that shows the Landlord paid \$89.60 to have the carpet professionally cleaned.

The male Tenant stated that they cleaned the carpets with a “personal” carpet cleaner. He acknowledged that they did not have the carpets cleaned by a professional.

Analysis

Based on the evidence presented at the hearing and in the absence of evidence to the contrary, I find that this tenancy began on April 09, 2010, that the Tenants were required to pay monthly rent of \$700.00, and that the tenancy ended on October 25, 2010.

Section 21 of the Residential Tenancy Regulations stipulates that a condition inspection report that is completed in accordance with the legislation is evidence of the state or repair and condition of the rental unit on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary. As the Tenant submitted no evidence to corroborate the male Tenant’s statement that the Condition

Inspection Report that was completed on April 09, 2010 does not accurately reflect the condition of the rental unit at the beginning, I find that the Condition Inspection Report accurately reflects the condition of the rental unit on April 09, 2010. I do not consider the male Tenant's statement that the report is incomplete or inaccurate to constitute "a preponderance of evidence to the contrary".

Section 17(1) of the *Residential Tenancy Regulations* stipulates that a landlord must offer a tenant a first opportunity to schedule a condition inspection by proposing one or more dates and times. I find that the Landlord complied with this section when the caretaker posted the letter on the Tenants' door on October 21, 2010, even though this letter was apparently not located by the Tenants.

Section 17(2) of the *Residential Tenancy Regulations* stipulates that a landlord must offer a tenant a second opportunity to inspect the rental unit at an alternate time and date, by giving notice in the approved form. There is no evidence to show that the Landlord complied with this section.

Although I accept that the Landlord completed a Condition Inspection Report on October 25, 2010, I find that it was not completed in accordance with the legislation, as the Landlord did not comply with section 17(2) of the *Residential Tenancy Regulations*. As this report was not completed in accordance with the legislation and the Tenant did not participate in the final inspection, I find that it is not evidence of the state or repair and condition of the rental unit on the date of the inspection, pursuant to section 21 of the *Residential Tenancy Regulations*. As the individual who completed the Condition Inspection Report on October 25, 2010 did not attend the hearing to attest to his entries on the report, I find that the report is of limited evidentiary value.

On the basis of the Condition Inspection Report that was completed on April 09, 2010, I find that the trim around the door in the living room was not missing at the beginning of this tenancy. I find that the Condition Inspection Report that was completed on April 09, 2010 was sufficiently detailed to cause me to conclude, on the balance of probabilities, that the trim around the door in the living room was intact at the start of the tenancy. In my view an item this significant would have been noted on a report that was completed in this detail.

As the Tenant did not dispute that the trim around the door frame was missing at the end of the tenancy, I find that the trim was damaged during this tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair/replace the door trim at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*. On the basis of the testimony of the Agent for the Landlord #1 and in the absence of evidence to the contrary, I accept that the caretaker spent approximately four hours repairing the damage to the wall where the door trim had been and repainting that wall. I find that to be a reasonable amount of time to repair damages of this nature and I find that the Landlord is entitled to \$60.00 compensation for the caretaker's time, which is based on an hourly rate of \$15.00, which I find to be very reasonable.

On the basis of the Condition Inspection Report that was completed on April 09, 2010, I find that the bedroom door was in reasonably good condition at the beginning of this tenancy. I find that the Condition Inspection Report that was completed on April 09, 2010 was sufficiently detailed to cause me to conclude, on the balance of probabilities, that the door was intact. In my view if even half of the damage to the door that is depicted in the photographs that were submitted by the Landlord existed prior to the tenancy beginning, the damage would have been noted on a report that was completed in this detail.

On the basis of the photographs that were submitted in evidence, I find that the door to the bedroom in the rental unit sustained significant damage during this tenancy. I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair/replace the door at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

On the basis of the testimony of the Agent for the Landlord #1 and in the absence of evidence to the contrary, I accept that the caretaker spent approximately one hour installing a new door. I find that to be a reasonable amount of time to install a door I find that the Landlord is entitled to \$15.00 compensation for the caretaker's time, which is based on an hourly rate of \$15.00, which I find to be very reasonable. I find that the Landlord is also entitled to compensation, in the amount of \$96.29, which is the amount the Landlord paid for a new door; to compensation of \$55.00, which is the amount the Landlord paid to have the door delivered; and to \$22.69 in taxes that were paid by the Landlord.

On the basis of the male Tenant's testimony and the photographs that were submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenants' failure to comply with the *Act*.

On the basis of the male Tenant's testimony and the photographs that were submitted in evidence, I find that the Landlord is entitled to compensation for cleaning the fridge, the oven, the bathtub, and the closet in which personal items were left. I decline to award the Landlord compensation for cleaning the balcony as the Tenants do not acknowledge that the balcony was not left in reasonably clean condition and the individual who photographed the balcony did not attend the hearing to attest to the condition of the balcony. I decline to award the Landlord compensation for additional cleaning in the rental unit, as the Tenants do not acknowledge that additional cleaning was required; the photographs do not establish that additional cleaning was required; and the individual who inspected the unit at the end of the tenancy did not attend the hearing to attest to the condition of the rental unit.

On the basis of the photographs that were submitted in evidence I find that it would take approximately eight hours to clean the fridge, the oven, the bathtub, and the closet in which personal items were left and I find that the Landlord is entitled to \$120.00 compensation for the caretaker's time, which is based on an hourly rate of \$15.00, which I find to be very reasonable.

On the basis of the undisputed evidence presented at the hearing, I find that the tenancy agreement required the Tenants to have the carpets professionally cleaned at the end of the tenancy and that the Tenants did not hire a professional to clean the carpets at the end of the tenancy. I therefore find that the Tenants must compensate the Landlord for the cost of having the carpets professionally cleaned, as per this term in the tenancy agreement. As the Landlord paid \$89.60 to have the carpets cleaned, I find that the Tenants must pay this amount to the Landlord.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$508.58, which is comprised of \$60.00 for repairing and painting a wall in the living room, \$188.98 for replacing the bedroom door, \$120.00 for cleaning the rental unit, \$89.60 for cleaning the carpet, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for the amount \$505.58. In the event that the Tenant does not 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 *Residential Tenancy Act*.

Dated: March 01, 2011.

Residential Tenancy Branch