Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an 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 keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit 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 questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for unpaid rent/loss of revenue and for damage to the rental unit; whether the security deposit should be retained by the Landlord or returned to the Tenant; and whether either party is entitled to recover the fee for filing an Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2009; that the Tenant paid a security deposit of $750.00 on June 31, 2009; that the Tenant was

required to pay monthly rent of $1,500.00 by the first day of each month; and that the Tenant vacated the rental unit on August 31, 2011.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning of this tenancy, a copy of which was submitted in evidence. The Landlord and the Tenant agree that they verbally agreed to complete a condition inspection report on August 31, 2011, although the Tenant believes they were to meet at 9 p.m. and the Landlord believes they agreed to meet at 8 p.m. The Tenant and the Landlord agree that the Tenant did not attend the rental unit on the evening of August 31, 2011.

The Landlord stated that she posted a Notice of Final Opportunity to Schedule a Condition Inspection on the door of the rental unit on August 31, 2011, in which she proposed a time to meet the following day. She stated that she completed a Condition Inspection Report on August 31, 2011, in the absence of the Tenant, a copy of which was submitted in evidence.

The Tenant stated that she left a note, with a forwarding address, under the door of the rental unit on August 31, 2011. This is inconsistent with her written declaration that she left it on August 29, 2011. The Landlord stated that she did not receive this note.

The Landlord stated that she did not receive a forwarding address for the Tenant until she received the Tenant's Application for Dispute Resolution on September 24, 2011. The Landlord stated that she was out of town between October 01, 2011 and October 10, 2011, and she did not file her Application for Dispute Resolution until October 20, 2011.

The Landlord and the Tenant agree that the Tenant did not give the Landlord permission to retain any portion of the security deposit and that none of the security deposit has been returned to the Tenant.

The Landlord and the Tenant agree that the Tenant often paid her rent by leaving cash under the Landlord's door and that the Landlord did not typically provide a receipt for such payments. The Landlord and the Tenant agree that the Tenant paid $175.00 for rent, in cash, on August 02, 2011 and $215.00 for rent, in cash, on August 16, 2011, leaving a balance of $1,110.00 in rent for August.

The Landlord stated that the Tenant left a cheque under her door on August 31, 2011, in the amount of $700.00. She stated that she cashed this cheque, leaving rent arrears of $410.00. The Landlord is seeking compensation for unpaid rent from August, in the amount of $410.00.

The Tenant stated that she left $1,110.00 in cash under the Landlord's door on August 31, 2011. She stated that the Landlord did cash cheque #144, which was in the amount of $700.00, but that this cheque was given to her in February. She stated that after giving the Landlord this cheque in February she paid the Landlord $700.00 in cash and asked her to destroy the cheque. The Tenant submitted a photocopy of the front of

cheque #44, dated February 17, 2011, but did not provide a photocopy of the back of the cheque to show when it was cashed. She stated that she realized the Landlord had cashed this cheque on September 07, 2011.

The Tenant stated that on August 01, 2011 she left a note under the Landlord's door, in which she declared that she was ending the tenancy on August 31, 2011. The Landlord stated that she did not receive this note and that the Tenant never provided her with written notice of her intent to vacate at the end of August. She stated that sometime between August 03, 2011 and August 06, 2011 the Tenant verbally informed her that she was vacating at the end of August of 2011.

The Landlord stated that she advertised the rental unit sometime after the first week in September and that she found a new tenant for November 01, 2011.

The Landlord is seeking compensation, in the amount of $50.00 for cleaning the rental unit. The Landlord stated that she spent approximately five hours cleaning the rental unit.

The Landlord submitted photographs of the rental unit, which the Landlord stated were taken on September 01, 2011 or September 02, 2011. The Landlord submitted a letter from the Witness for the Landlord, dated September 29, 2011, in which he declared that he was present when the photographs were taken. The photographs clearly show that some cleaning was required in the rental unit, including the need to clean the oven/stove.

The Landlord submitted a condition inspection report, dated August 31, 2011, which is signed by the Witness for the Landlord. In the letter from the Witness for the Landlord, dated September 29, 2011, he declared that he was present when the report was completed. The report indicates that cleaning was required.

The Tenant stated that she spent many hours cleaning the rental unit and that it was in clean condition at the end of the tenancy. She stated that the photographs and the condition inspection report do not represent the condition of the rental unit at the end of the tenancy. She stated that she believes somebody has done a lot of cooking in the oven since she vacated the rental unit.

The Witness for the Tenant stated that the Tenant, who is his daughter, spent four days cleaning the rental unit and that it was clean at the end of the tenancy. He stated that the photographs submitted in evidence by the Landlord do not accurately reflect the condition of the rental unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $293.44, for disposing of garbage left outside the rental unit by the Tenant. The Landlord submitted photographs of garbage left outside the rental unit, which included numerous household items. There is no mention of the garbage on the condition inspection report. The Witness for

the Landlord was unable to state whether the garbage was left by the Tenant or the Landlord.

The Landlord stated that all of the garbage was left by the Tenant. The Tenant stated that some of the garbage was hers but that most of the garbage was left by the Landlord.

The Landlord is seeking compensation, in the amount of $44.80, for the cost of replacing some baseboards in one bedroom. The parties agree that the Tenant installed a floating floor over the floor in one bedroom, with the understanding that it would be removed at the end of the tenancy. The parties agree that it was not removed at the end of the tenancy.

The Landlord stated that the baseboards were not reinstalled; that some of them were located in the rental unit; and that some were missing. The Tenant stated that all of the baseboards were in place at the end of the tenancy.

The Landlord submitted photographs of the missing baseboards at the end of the tenancy. The Landlord noted on the condition inspection report completed at the end of the tenancy that the trim was missing in one bedroom. The Tenant stated that the photographs and the report are not representative of the condition of the baseboards at the end of the tenancy.

Analysis

As there is no dispute that the Tenant vacated the rental unit on August 31, 2011, I find that this tenancy ended on August 31, 2011, pursuant to section 44(1)(d) of the *Act.*

I find that the Tenant has submitted insufficient evidence to show that she provided the Landlord with a forwarding address, in writing, on August 29, 2011. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's statement that she left the forwarding address under the door of the rental unit or that refutes the Landlord's statement that she did not locate the forwarding address. As the Tenant has applied for the return of her security deposit, I find the onus is on her to prove when the Landlord received her forwarding address.

I find that the Landlord received the Tenant's forwarding address, in writing, when she received the Tenant's Application for Dispute Resolution on September 24, 2011. I based this conclusion on the Landlord's acknowledgment that she received the forwarding address on that date.

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 or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord was obligated to repay the deposit or file an Application for Dispute Resolution by October 09, 2011, which is fifteen days

after she received the Tenant's forwarding address. As the Landlord has not repaid the security deposit and she did not file an Application for Dispute Resolution until October 20, 2011, I find that the Landlord did not comply with section 38(1) of the *Act.*

Section 38(2) of the *Act* stipulates that a landlord is not required to comply with section 38(1) of the *Act* if the tenant's right to the return of a security deposit has been extinguished under sections 24(1) or 36(1) of the *Act.* Section 36(1) of the *Act* stipulates that a tenant's right to the return of the security deposit is extinguished if the landlord complied with section 35(2) of the *Act* and the tenant has not participated on either occasion.

Section 35(2) of the *Act* stipulates that the landlord must offer the tenant at least two opportunities to inspect the rental unit, one of which must be a written offer. On the basis of the undisputed evidence, I find that the Landlord provided the Tenant with an opportunity to inspect the rental unit on August 31, 2011 at 8 p.m. or 9 p.m.; that the Landlord posted a Notice of Final Opportunity to Schedule an Inspection, in which she provided the Tenant with a second opportunity to inspect the rental unit; and that the Tenant did not attend either of the scheduled appointments.

I find that the Landlord did comply with section 35(2) of the *Act* and that she did not, therefore need to comply with section 38(1) of the *Act*. On this basis, I dismiss the Tenant's application for the return of double her security deposit.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord received $175.00 in rent, by cash, on August 02, 2011 and $215.00 in rent, by cash, on August 16, 2011. On the basis of the undisputed evidence presented at the hearing, I also find that the Landlord cashed a cheque, in the amount of $700.00, and applied it to rent for August. I have made no determination on when the Landlord received that cheque, as it is not particularly relevant to the amount of rent that is due.

I find that the Tenant has submitted insufficient evidence to show that she paid $1,110.00 in rent on August 31, 2011. In reaching this conclusion I was influenced, to some degree, by the absence of any documentary evidence, such as a bank statement that shows a recent withdrawal, that would help to corroborate this statement.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the Tenant's testimony that she paid $1,110.00 in cash on August 31, 2011 is not particularly credible. In reaching this conclusion I was heavily influenced by the fact that if the Tenant's version of events were true, she would have overpaid her rent for August by $700.00, given the fact that the Landlord had cashed a $700.00 rent cheque; that the Tenant would have been aware of that overpayment by September 07, 2011 when she realized the $700.00 cheque had been cashed; and that the Tenant made no mention of the overpayment when she filed her Application for Dispute Resolution on September 22, 2011. In my view it is highly likely that the Tenant would have applied to recover the overpayment of $700.00 on September 22, 2011 if an overpayment had been made.

In determining that the Tenant's testimony that she paid $1,110.00 in cash on August 31, 2011 is not credible, I was further influenced by the fact that the parties communicated regularly by text messaging during the tenancy; that the Tenant sent the Landlord a text message on September 07, 2011, in which she chastised the Landlord for cashing a $700.00 cheque that had been given to her in February of 2011; and that the Tenant did not mention the $700.00 "overpayment" in this text message or any other text message submitted in evidence. In my view it is highly likely that the Tenant would have mentioned the overpayment of $700.00 in this message if an overpayment had been made.

As I do not accept the Tenant's testimony that she paid $1,110.00 in cash on August 31, 2011, I find that she still owes the Landlord $410.00 in rent for August of 2011.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice 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. To end this tenancy on August 31, 2011 in accordance with section 45 of the *Act*, the Tenant was required to give notice of her intent to vacate on, or before, July 30, 2011, given that rent was due on the first day of each month.

Even if I were to accept the Tenant's testimony that she gave the Landlord written notice to end the tenancy on August 01, 2011, I find that this notice would not have served to end the tenancy on August 31, 2011. Section 53 of the *Ac*t stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. The earliest effective date of the notice that was allegedly given on August 01, 2011 was September 30, 2011.

Section 26 of the *Act* stipulates that a tenant must pay rent when rent is due. As the Tenant had not properly ended this tenancy by September 01, 2011, I find that the Tenant was obligated to pay rent when it was due on September 01, 2011.

I find that the written notice allegedly provided to the Landlord on August 01, 2011 did not give the Landlord the right to regain possession of the rental unit until September 30, 2011. I find that the Landlord could not rent this unit to a new tenant until the

Tenant had physically abandoned the rental unit on August 31, 2011 or until the tenancy ended on September 30, 2011, in the event written notice had truly been provided. I therefore find that the Landlord acted reasonably by not advertising the rental unit until the rental unit had been vacated.

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 a damage or loss occurred; 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.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I favour the evidence of the Landlord over the evidence of the Tenant in this regard, in part, because it is corroborated by photographs submitted in evidence by the Landlord. Although both the Tenant and the Witness for the Tenant do not acknowledge that the photographs reflect the condition of the rental unit at the end of the tenancy, I find that it is more likely that they do. In reaching this conclusion I was influenced by my opinion that the photographs depict dirt that has accumulated over time. I also find it difficult to accept the Tenant's argument that somebody used the oven after her tenancy ended, as the rental unit was vacant during September and October and I find it unlikely that the Landlord would purposely dirty an oven simply to support a claim for $50.00.

I favoured the evidence of the Landlord over the evidence of the Tenant in regards to the cleanliness of the unit, in part, as the evidence of the Landlord was supported by the condition inspection report that the Landlord completed at the end of the tenancy. This report was completed in the absence of the Tenant but in the presence of the Witness for the Tenant. The report was completed after the Tenant failed to attend the scheduled inspection on August 31, 2011. I find that the Landlord complied with her obligation to provide the Tenant with a second opportunity to participate in an inspection, in writing, when she posted a Notice of Final Opportunity to Schedule an Inspection at the rental unit on August 31, 2011. In short, I find that the report was completed in accordance with the legislation.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed in accordance with the legislation is evidence of the state and repair of the rental unit or residential property on the date of the inspection, unless either the tenant or the landlord has a preponderance of evidence to the contrary. I do not find that the testimony of the Tenant and the Tenant's witness constitutes a preponderance of evidence, considering it was met with conflicting evidence from the Landlord and her witness.

I find that the Landlord is entitled to compensation for the five hours she spent cleaning the rental unit, at a rate of $10.00 per hour, which I find to be very reasonable compensation.

Although the Landlord submitted photographs of a pile of garbage outside of the rental unit, I find that the Landlord submitted insufficient evidence to establish that most of the garbage was left by the Tenant. Although the Tenant acknowledged adding a few items to the pile, the onus is on the Landlord to establish that the Tenant left most of the garbage.

In making this determination, I was heavily influenced by the fact that there is no mention of the garbage pile on the condition inspection report that the Landlord completed at the end of the tenancy. As this report is evidence of the state and repair of the residential property on the date of the inspection, unless either the tenant or the landlord has a preponderance of evidence to the contrary, I find that it is reasonable to conclude that the Landlord did not attribute this pile to the Tenant when she completed the report. I find that the testimony of the Landlord and her photographs are not sufficient to show that the condition inspection report is inaccurate or incomplete. On this basis, I dismiss the Landlord's application to recover the cost of disposing of the garbage.

On the basis of the condition inspection report completed at the end of the tenancy, which is supported by photographs and the testimony of the Landlord, I find that there were baseboards missing in one bedroom at the end of the tenancy. In reaching this conclusion I found that the Tenant's testimony contradicting this claim simply cannot be considered a preponderance of evidence to the contrary.

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. In these circumstances I find that the Landlord failed to establish the true cost of replacing the baseboards. 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 $44.80 to replace the baseboards. Although the Landlord did submit a computer generated document from a well known building supplier, it does not support the claim for $44.80. On this basis I dismiss the Landlord's claim for compensation for replacing the baseboards.

Conclusion

I find that the Landlord's application has merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of her Application for Dispute Resolution. I find that the Tenant's application has been without merit and I dismiss her application to recover the cost of filing her Application for Dispute Resolution.

I find that the Landlord has established a monetary claim, in the amount of $2,010.00, which is comprised of $410.00 in unpaid rent for August of 2011; $1,500.00 in unpaid rent from September of 2011; $50.00 for cleaning the rental unit; ; and $50.00 in

compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I authorize the Landlord to retain the Tenant's security deposit of $750.00 in partial satisfaction of this monetary claim. Based on these determinations I grant the Landlord a monetary Order for the balance of amount $1,260.00. 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: November 15, 2011.

Residential Tenancy Branch