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 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 keep all or part of the 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 relevant questions, and to make submissions to me.

At the outset of the hearing the Landlord applied to amend her Application for Dispute Resolution to reflect the correct spelling of the name of each Tenant, as provided by the Tenants at the hearing. The Application was amended accordingly.

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 damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; 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 December 10, 2010; that the Tenant paid a security deposit of $500.00 and a pet damage deposit of $500.00; that a Condition Inspection Report was completed at the start of the tenancy; and that the tenancy ended on February 18, 2012.

The Landlord and the Tenant agree that they jointly inspected the rental unit on February 18, 2012. The Landlord stated that she neglected to bring the Condition Inspection Report with her when they met on February 18, 2012; that she returned home to retrieve the Report and she returned with the wrong document; and that the Tenant could not sign a Condition Inspection Report because she did not have the proper form with her; and that nothing was signed during this inspection. The female Tenant stated that she did sign a Condition Inspection Report but she was not given a copy of the document she signed.

The Landlord and the Tenant agree that the Tenant provided the Landlord with a forwarding address, via email, on February 21, 2012. The Tenant contends that it was also written on the Condition Inspection Report that was signed on February 18, 2012 and the Landlord contends it was provided verbally on that date.

The Landlord and the Tenant agree that the Landlord provided the Tenant with a Notice of Final Opportunity to Schedule a Condition Inspection on February 25, 2012. The Tenant declined to attend the inspection as the unit had already been inspected on February 18, 2012.

The Landlord is seeking compensation, in the amount of $100.00, for something she describes as “take down, repaired, re-hung”. The Landlord stated that this is a claim for repairing the blinds. The female Tenant stated that she did not understand the nature of this claim until it was fully explained at the hearing.

The Landlord is seeking compensation, in the amount of $179.20, for repairing and painting a wall in the living room that was cracked. The Landlord speculates that the wall was cracked and the baseboard heater became detached from the wall when something heavy was thrown against the wall. The female Tenant stated that their couch was against the wall; that they did not notice the crack until they moved the couch; and that the heater was attached to the wall when they vacated the unit.

The Tenant submitted a photograph of a crack in the wall in the hallway of the rental unit, which they contend demonstrates that the walls in the unit were cracking due to normal wear and tear. The Landlord submitted video images that are not of good quality and photographs of the wall in the living room, which shows a crack in the wall and the baseboard heater lying on the floor beside the wall.

The Landlord submitted a copy of an email, dated February 22, 2012, in which she informs the Tenant that the heater fell of the wall when she touched it.

The Landlord is seeking compensation, in the amount of $380.00, for cleaning the rental unit. The Landlord contends that several areas in the rental unit required cleaning. The Tenant contends that the rental unit was clean, with the exception of the oven.

The Tenant submitted photographs of the rental unit which shows it was left in reasonably clean condition, with the exception of the oven, which had some stains. The

Landlord submitted several photographs and video images of the rental unit and the exterior porch which shows that some cleaning was required on the porch, the floor, window sills, the stove, and some doors/mouldings. The Landlord stated that she spent 11 hours cleaning the inside of the unit and 2 hours cleaning the outside of the unit.

The Landlord is seeking compensation, in the amount of $5.00, for replacing a kitchen sink stopper. The female Tenant stated that the stopper provided with the rental unit broke during their tenancy, due to normal wear and tear; that they purchased a replacement stopper; and that they left the replacement stopper in the rental unit. The Landlord submitted a photograph of a broken sink stopper.

The Landlord is seeking compensation, in the amount of $450.00, for repairing the floor in the bathroom which was damaged by water. The Landlord contends that Tenants are obligated to repair the damage because they did not advise her that water was leaking onto the floor. The female Tenant stated that they were aware there was damage to the floor; they believed it was a pre-existing condition; and that the water was leaking along the tug and down the side of a cabinet adjacent to the tub.

The Landlord and the Tenant agree that there is a notation on the Condition Inspection Report that was completed at the start of the tenancy that indicates the bathtub requires caulking. The female Tenant stated that the caulking was never replaced. The Landlord stated that she re-caulked the bathtub prior to the Tenant moving in. When asked why there would be a notation on the Condition Inspection Report regarding the need for caulking she stated that she is certain she re-caulked the bathtub, although she is not certain when. The Tenant submitted photographs of the caulking and the bathtub.

The Landlord is seeking compensation for the cost of repairing the solar hot water system which she contends resulted when the Tenants did not advise her the system had malfunctioned. The landlord stated that the controls for the system are located in a laundry area the Tenants shared with other occupants of the residential complex; that the Tenants should have noticed lights flashing which indicate a system failure; that they should have reported the problem to the Landlord; that the Tenants would not have experienced a problem with the hot water system as a result of the failure as there is a second hot water tank that is powered by hydro; and she is willing to charge the other occupants of the rental unit for 50% of the cost of the repairs.

The female Tenant stated that they did not notice any indications that the hot water system had failed so they could not report the problem to the Landlord.

The Landlord is seeking compensation, in the amount of $100.00, because the Tenant screwed two hooks into two trees. The Tenant agrees that they screwed two hooks into two trees for the purposes of installing a clothes line. The Landlord submitted photograph of one of the hooks. The Landlord stated that she arbitrarily assessed the damage to the trees to be $100.00.

The Landlord is seeking compensation, in the amount of $50.00, for the cost of removing a significant amount of property the Tenant left at the front door. The female Tenant agreed that they left a significant amount of property outside the front door, as they believed it would be picked up by garbage collectors. The Landlord stated that she paid a friend $50.00 to dispose of the property, although she submitted no evidence to corroborate this statement.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that this tenancy began in 2010; that the Tenant paid a pet damage deposit and security deposit of $1,000.00; that the tenancy ended on February 18, 2012; and that the Tenant provided the Landlord with a forwarding address, via email, on February 21, 2012.

The Landlord's claim for compensation of $100.00, for "take down, repaired, re-hung" is dismissed pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act),* because the Application for Dispute Resolution did not provide sufficient particulars of this portion of the claim for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the unclear language used by the Landlord in her list of monetary claims and by the female Tenant's testimony that the nature of this claim was not clear to her. I find that proceeding with this portion of the Landlord's claim would be prejudicial to the Tenant, as the unclear language made it difficult for the Tenant to adequately prepare a response to this particular claim.

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 Landlord submitted insufficient evidence to show that the crack in the wall in the living room was caused by neglect or abuse. In reaching this conclusion I was heavily influenced by the photograph of the crack in the wall, which is typical of cracking that can occur in walls over time in buildings of this vintage. I note that the nature of the damage is not consistent with the type of damage that typically occurs when an item is thrown against a wall. I was further influenced by the photograph of the crack in the hallway submitted by the Tenant, which suggests that the walls in the unit may be cracking due to normal wear and tear.

Section 37(2) of the *Act* stipulates that tenants must leave the rental unit undamaged except for reasonable wear and tear. As the Landlord has submitted insufficient evidence to establish that the crack in the living room wall was not the result of reasonable wear and tear, I find that the Tenant is not obligated to repair this damage.

I find that the Landlord submitted insufficient evidence to show that the baseboard heater became detached from the wall due to neglect or abuse. In reaching this conclusion I was heavily influenced by the email, dated February 22, 2012, in which she informed the Tenant the heater fell off the wall when she touched it. I find it entirely possible that the wall was poorly attached to the wall throughout this tenancy and that it simply, over time, became detached from the wall. As the Landlord has submitted insufficient evidence to establish that the heater fell off the wall due to the Tenant's misuse or neglect, rather than reasonable wear and tear, I find that the Tenant is not obligated to repair this damage. For these reasons I dismiss the Landlord's claim for repair and painting the living room wall.

In considering the claim for reattaching the baseboard heater, I note that the cost of reattaching the heater to the wall is minimal, given that it is attached with one or two screws and re-painting is not typically required. Even if the Tenant was responsible for the damage to the wall, the nature of the damage does not support the amount of compensation being claimed by the Landlord.

After hearing the testimony of both parties regarding the cleanliness of the rental unit and viewing the images submitted in evidence, I find that some additional cleaning was required. In reaching this conclusion I was heavily influenced by the Tenant's admission that the oven was not cleaned completely and by the images submitted by the Landlord, which demonstrate the cleaning was required in various locations. I find that the Tenant failed to comply with section 37(2) of the *Act* when they failed to leave the unit in reasonably clean condition. Based on the photographs provided by the Landlord, I find the Landlord's estimate that it took her 13 hours to clean the inside and outside of the unit to be reasonable. I find that the Landlord is entitled to compensation for the time she spent cleaning the unit, at an hourly rate of $25.00 per hour, which I find to be reasonable for labour of this nature. I therefore award the Landlord $325.00 for cleaning the rental unit.

I find that the Landlord submitted insufficient evidence to show that the sink stopper was damaged by neglect or abuse. In reaching this conclusion I was heavily influenced by the fact that items such as sink stoppers deteriorate over time and break during normal use. As tenants are not obligated to repair damage resulting from normal wear and tear, I dismiss the Landlord's claim for compensation for replacing the stopper.

On the basis of the Condition Inspection Report that was submitted in evidence, I find that the bathtub required caulking at the start of the tenancy. I favour the testimony of the Tenant, who stated that the caulking was not replaced, over the testimony of the Landlord, who stated that it was replaced. I favoured the evidence of the Tenant because the Tenant's evidence was forthright and consistent. Conversely, the Landlord initially stated that the caulking was replaced at the start of the tenancy and then altered that testimony once it was pointed out that it was inconsistent with the Condition Inspection Report. I was also heavily influenced by photographs of the caulking which, in my view, demonstrates that the caulking has not been replaced within the previous two years.

While I accept that water has leaked down the side of the bathtub, I am not convinced that the faulty caulking did not significantly contribute to the resulting damage. I based this conclusion on the photographs of the bathtub, which demonstrates that water could easily have travelled over the edge of the bathtub through the faulty caulking and onto the floor. Section 7(2) of the *Act* requires landlords to take reasonable steps to minimize damage or loss. In my view, the Landlord had an obligation to minimize the risk of water damage in the bathroom of this rental unit by re-caulking the bathtub. As the Landlord failed to take reasonable steps to protect the water from damaging the bathroom, I dismiss the Landlord's claim for compensation for the damage to the floor.

I find that the Landlord has failed to establish that the Tenant was aware that the solar hot water system had failed. In reaching this conclusion I was heavily influenced by the absence of evidence that refutes the female Tenant's testimony that they did not know there was a problem with the system. I specifically note that the controls for the system were located in a common area shared by another occupant of the residential complex and there is nothing that would cause me to conclude that the Tenant had direct care or control of the system or that the Tenant accepted responsibility for monitoring the system. As the Landlord has failed to establish that the Tenant was aware of a problem with the system, I dismiss the Landlord's claim for compensation for damages arising from the Tenant's failure to report a system failure.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants screwed two hooks into two trees. 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 the damage to the trees. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's claim that the trees have been significantly damaged and that the value of the trees has been reduced by $100.00. On this basis, I dismiss the Landlord's claim for compensation for damage to the trees.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenants left a significant amount of property outside the rental unit, which they expected would be taken away by garbage disposal personnel. In addition to establishing that the Tenants left property behind, the Landlord must also accurately establish the cost of disposing of the property. In these circumstances, I find that the Landlord failed to establish the true cost of disposing of the property. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that she paid a friend $50.00 to dispose of the property. On this basis, I dismiss the Landlord's claim for compensation for disposing of the property.

Section 35(1) of the *Act* specifies that the landlord and the tenant must jointly inspect the rental unit at the end of the tenancy. On the basis of the undisputed evidence presented at the hearing, I find that the parties complied with this obligation on February

18, 2012 when they jointly inspected the rental unit. I find that the Tenant was not under any obligation to inspect the rental unit on any other date after this inspection was complete.

Section 35(3) of the *Act* specifies that the landlord must complete a condition inspection in accordance with the regulations. I find that I have insufficient evidence to conclude that the Landlord completed a Condition Inspection Report on February 18, 2012. In reaching this conclusion I note that the Landlord insists one was not completed, as she brought the wrong form. I have insufficient evidence to discount this testimony. I note that the female Tenant insists that she signed a Condition Inspection Report and I have no reason to discount her testimony either. In the absence of evidence that corroborates the testimony of either party, I cannot determine, with reasonable accuracy, whether the Landlord complied with section 35(3) of the *Act.*

Section 35(4) of the *Act* specifies, in part, that the landlord and the tenant must sign the condition inspection report. For all of the aforementioned reasons, I cannot determine, with reasonable accuracy, whether the Landlord and the Tenant complied with this portion of section 35(4) of the *Act.*

Section 35(4) of the *Act* specifies, in part, that the landlord must provide the tenant with a copy of the condition inspection report. The *Residential Tenancy Regulation* stipulates that this report must be provided to the tenant within fifteen days after the report is completed and the landlord receives a forwarding address for the tenant. The undisputed evidence presented at the hearing is that the Landlord did not provide the Tenant with a copy of a Condition Inspection Report that was completed at the end of the tenancy. Regardless of whether the Landlord failed to provide the Tenant with a copy of the report due to the fact the Landlord did not create one or because she created one and neglected to provide it to the Tenant, I find that the Landlord failed to comply with section 35(4) of the *Act.*

Section 36(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if having made an inspection with the tenant the landlord does not complete the condition inspection report and give the tenant a copy of it. As the Landlord did not give the Tenant a copy of the condition inspection report within the legislated fifteen days, I find that the Landlord extinguished her right to claim against the security deposit and pet damage deposit.

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 36(2) 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.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), 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(6) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

Conclusion

As the Landlord must pay the Tenant double the security deposit and pet damage deposit, I find that the Landlord must pay $2,000.00 to the Tenant.

I find that the Landlord's Application for Dispute Resolution has some merit, as she has established a monetary claim, and I therefore find that she is entitled to recover the fee paid to file her Application. I find that the Landlord has established a monetary claim, in the amount of $375.00, which is comprised of $325.00 for cleaning and $50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Although the Landlord's right to claim against the security deposit is extinguished sections 62(3) and 72(2) permit me to offset the cost of damages against the security deposit held by a Landlord.

At the hearing the female Tenant agreed that the Landlord could retain $135.67 from the security deposit in compensation for a water bill. As the Tenant consented to this reduction, I find that it is appropriate to also offset this amount.

Based on these determinations I grant the Tenant a monetary Order for the amount $1,489.33. In the event that the Landlord does not 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 *Residential Tenancy Act*.

Dated: May 08, 2012.

Residential Tenancy Branch