



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, 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; 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 relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for lost revenue and for damage to the rental unit and is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on March 01, 2012 and was to continue until March 01, 2013. The agreement declares that the Tenant is required to pay rent of \$695.00 by the first day of each month; that a "sum of \$250.00 will be deducted from the security/damage deposit" if the tenant vacates prior to the end of the fixed term of the tenancy; and that the Tenant paid a security deposit of \$695.00. The parties agree these were terms of the tenancy agreement.

The Landlord is seeking to retain the \$250.00 from the security deposit paid by the Tenant, as the Tenant ended the tenancy before the March 01, 2013. The Tenant stated that she believes she has already paid this fee, but she is not certain. The Landlord stated that the fee has not been paid.

The Landlord and the Tenant agree that a condition inspection report was not completed at the beginning or the end of this tenancy.

The Landlord and the Tenant agree that the Tenant gave written notice to end this tenancy on December 31, 2012; that the tenancy ended on December 31, 2012; and that the Tenant provided the Landlord with a forwarding address, in writing, on January 02, 2013.

The Landlord is seeking compensation for a damaged kitchen drawer. The Landlord submitted a photograph of the drawer, which shows the face plate has pulled away from the drawer. The Tenant stated that she stored cutlery in this drawer and that the front of the drawer came apart during normal use.

The Landlord is seeking compensation for the cost of replacing the drain stopper in the bathroom sink, which is normally affixed to the plumbing. The Tenant stated that she removed the stopper to clean the drain and simply did not replace it.

The Landlord is seeking compensation for the cost of replacing a kitchen window screen that was missing at the end of the tenancy. The Tenant stated that she removed the screen, that she left it outside, and that she does not know where it is now.

The Landlord is seeking compensation for the cost of replacing the smoke detector which was disconnected during the tenancy. The Tenant stated that she removed the smoke detector but it simply needed to be plugged back into the ceiling.

The Landlord is seeking compensation for the cost of repainting the rental unit. The Landlord and the Tenant agree that the Tenant left a pot on the stove and that the smell of the burning pot could be smelled in the upper unit. The Landlord stated that the walls needed to be repainted to eradicate the smell and because the incident had discolored the walls. The Landlord submitted photographs of the walls. The Landlord stated that the rental unit was painted on February 08, 2012.

The Tenant stated that she washed the walls at the end of the tenancy; that the walls were not discolored; and that the rental unit did not smell. She stated that there were grease stains on the wall prior to the start of the tenancy and that she cleaned them after the Landlord took the photographs that were submitted in evidence. The Tenant stated that the walls were dirty when she moved into the rental unit and she does not believe the walls had been recently painted prior to the start of the tenancy.

The Advocate for the Tenant, who is employed by the Vancouver Island Health Authority, stated that she was in the rental unit for approximately one hour at the end of the tenancy and she could not smell residual smoke.

The Landlord stated that she paid a company \$1,100.00 to repair all of the damages outlined in this claim, but she does not know how much the company charged for each individual repair.

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 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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy.

I find that the Landlord submitted insufficient evidence to show that the front of the kitchen drawer did not pull away from the drawer due to normal wear and tear. In reaching this conclusion I was heavily influenced by the photograph of the drawer, which does not show any signs of force or abuse and which shows the drawer is not new and is not high quality. As the Landlord has failed to establish that the damage exceeded normal wear and tear, I dismiss the Landlord's application for compensation for the drawer.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to replace the drain stopper that she removed from the bathroom sink, she failed to replace the screen that she removed from the kitchen window, and she failed to replace the smoke detector that she removed. 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 these items. Although the Landlord testified that she paid a company \$1,100.00 to repair all of the damages outlined in this claim, she does not know how much the company charged for each individual repair. I therefore cannot conclude how much the Landlord paid to replace the stopper, the screen, or the smoke detector. I therefore award nominal damages, in the amount of \$1.00, for replacing the stopper, \$1.00 for replacing the screen, and \$1.00 for replacing the smoke detector. This award is not meant to compensate the Landlord for the cost of the repairs, it is simply meant to acknowledge that the Tenant has not complied with her obligation to leave the rental unit undamaged.

I find that the Landlord submitted insufficient evidence to show that the heater dials were damaged during the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence, such as a condition inspection report, that establishes the condition of the dials at the start of the tenancy. In the absence of evidence to show that the dials were in good order at the start of the tenancy, I cannot conclude that they were damaged during the tenancy. I therefore dismiss the Landlord's application for compensation for broken heater dials.

I find that the Landlord submitted insufficient evidence to show that the walls were damaged during the tenancy. In reaching this conclusion I was heavily influenced by

the absence of evidence, such as a condition inspection report, that corroborates the Landlord's testimony that the walls were painted just prior to the start of the tenancy or that refutes the Tenant's testimony that the walls had not been recently painted and that they were dirty. In the absence of evidence to show that the walls were in good order at the start of the tenancy, I cannot conclude that they were damaged during the tenancy. I therefore dismiss the Landlord's application for compensation for painting the walls.

In determining the claim for painting the walls, I was heavily influenced by the testimony of the Advocate for the Tenant, who declared that she did not smell residual smoke in the unit at the end of the tenancy. I find the testimony of this independent professional corroborates the Tenant's claim that the walls were not damaged.

In determining the claim for painting the walls, I placed little weight on the photographs submitted in evidence, as they do not, in my view, clearly demonstrate the walls were discoloured. Although the walls appear to be darker than the ceiling, I find that this can simply be attributed to the tint of the paint. When a unit is damaged by smoke, the ceiling is typically darker than the wall. I note that the photographs are not good quality, which makes it difficult to discern whether the walls are actually discoloured.

Section 20(e) of the *Act* stipulates that a landlord may not require, or include as a term of the tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy. I therefore find that the Landlord did not have the right to include the term in the tenancy agreement that stipulates that \$250.00 will be deducted from the security if the tenant vacates prior to the end of the fixed term of the tenancy.

Section 5 of the *Act* stipulates that landlords and tenant cannot avoid or contract out of the *Act* and that any attempt to avoid or contract out of the *Act* is of no effect. As the Landlord did not have the right to automatically deduct \$250.00 from the security deposit if the tenancy ended prior to the fixed term of the tenancy, I find this particular clause in the tenancy agreement is unenforceable. I therefore dismiss the Landlord's claim for \$250.00.

I find that the Landlords application has some merit that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$53.00, which is comprised of \$3.00 in nominal damages and \$50.00 in compensation for the filing fee paid for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit.

I order the Landlord to return the remaining amount of the security deposit, which is \$642.00, to the Tenant and I grant the Tenant a monetary Order for this amount. 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: April 04, 2013

Residential Tenancy Branch

