



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jordash Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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 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 Agent for the Landlord stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the female Tenant, via registered mail, at the address noted on the Application, on February 08, 2013. The Agent for the Tenant stated that the documents were mailed to the Tenant's father, who provided them to the Tenant. I find that the Tenant has received these documents and that they have been, therefore, sufficiently served pursuant to section 71(2)(b) of the Residential Tenancy Act (Act).

The Agent for the Landlord stated that the male Tenant has not been served with the Application for Dispute Resolution and the Notice of Hearing. I therefore dismiss the Landlord's claim for a monetary Order naming the male Tenant.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served with the Application for Dispute Resolution. The Agent for the Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

The Landlord submitted several Canada Post documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As they were not served to the Tenant they were not accepted as evidence for these proceedings.

The parties attending the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order of \$2,089.18 and to retain the security deposit of \$900.00 in compensation for unpaid rent and damage to the rental unit?

Background and Evidence

The Landlord and the Tenant agree that the Tenant entered into a tenancy agreement that began on August 15, 2010, which required the Tenant to pay monthly rent of \$1,800.00 by the first day of each month; that the Tenant paid a security deposit of \$900.00; and that the Tenant did not provide the Landlord with a forwarding address, orally or in writing, at any time.

The Landlord stated that she never received verbal or written notice to end the tenancy from the Tenant in April of 2011; that on May 05, 2011 she sent a letter to the rental unit requesting the rent that had not been paid for May; that the Tenant subsequently told her she could not afford the rent and would be moving out; that she posted a Notice to End Tenancy on the door of the rental unit on May 09, 2011; that a friend of the Tenant's provided her with a letter from the Tenant, dated May 09, 2011, in which the Tenant declared that she will be out of the rental unit by May 31, 2011; and that the Tenant had vacated the rental unit by May 27, 2011.

The Agent for the Tenant stated that the Tenant told him she has no recollection of writing the letter dated May 09, 2011; that the Tenant cannot declare, with certainty, that she did not write the letter; that the signature is not identical to the Tenant's signature on the tenancy agreement; that the Tenant has told him that the signature on the letter might be hers; that the Tenant told him that sometime in April of 2011 she gave the Landlord verbal notice of her intent to end the tenancy at the end of April; and that the Tenant had vacated the rental unit by the end of April.

The Landlord submitted a Proof of Service of a Ten Day Notice to End Tenancy for Unpaid Rent, in which she declares that on May 09, 2011 she posted a Notice to End Tenancy on the door of the rental unit. The Proof of Service is signed by an individual who witnessed the posting of the Notice, who also signed the Proof of Service.

The Landlord and the Tenant agree that no rent was paid for May of 2011.

The Agent for the Tenant stated that he is prepared to proceed with the claim for a variety of deficiencies with the rental unit in spite of the fact the Landlord did not provide a detailed calculation of the amount of compensation being claimed for each item.

The Landlord stated that the rental unit required cleaning at the end of the tenancy. The Landlord submitted photographs which corroborate this statement. The Landlord submitted receipts to show that the Landlord paid \$150.00 to clean the rental unit and \$151.20 to clean the carpet in the rental unit. The Agent for the Tenant does not dispute that the rental unit required cleaning at the end of the tenancy.

The Landlord stated that there were some scratches on the kitchen cupboards at the start of the tenancy and that there were additional scratches on the cupboards at the end of the tenancy. The Landlord submitted photographs which show there are some minor scratches on the cupboard drawers and doors. The Landlord stated that the cupboards have not yet been repaired. The Agent for the Tenant stated that the Tenant does not know if she damaged the cupboards during the tenancy.

The Landlord and the Tenant agree that the Tenant's children wrote on the walls during the tenancy; that some walls needed washing; and that some walls needed to be repainted. The Landlord stated that it took 2 people approximately 6 hours to repaint wash the walls and to re-paint, for which she is seeking compensation of \$240.00.

The Landlord stated that the door of the dishwasher would not close at the end of the tenancy. The Landlord submitted a copy of an invoice, in the amount of \$207.03, from an appliance repair company, in which the technician declared that the door hinges were bent due to excessive weight on the door. The Agent for the Tenant stated that the Tenant does not know believe the dishwasher was damaged during the tenancy.

The Landlord stated that the keys to the rental unit were not returned at the end of the tenancy so she hired a locksmith to change the locks on May 27, 2011. The Landlord submitted a copy of an invoice, in the amount of \$120.96, from a locksmith. The Agent for the Tenant stated that the Tenant left the keys under the front door mat and informed the Landlord of their location. The Landlord denies being told that the keys were left under the door mat.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement that required her to pay monthly rent of \$1,800.00 by the first day of each month.

I favor the testimony of the Landlord, who stated that the rental unit was vacated on May 27, 2011, over the testimony of the Agent for the Tenant, who stated that the rental unit had been vacated prior to April 30, 2011. In reaching this conclusion I was influenced, in part, by the absence of direct evidence from the Tenant. The testimony of the Agent for the Tenant is hearsay evidence which is subject to a variety of frailties, including the inability to ascertain the credibility of the individual who provided the information to the Agent for the Tenant.

In reaching this conclusion I was also influenced by the letter, dated May 09, 2011, in which the Tenant declared that she would vacate the rental unit by May 31, 2011. I find this letter corroborates the version of events provided by the Landlord. I find the Landlord's testimony that a friend of the Tenant provided her with this letter was forthright and direct. I find that the speculation that the Tenant did not write this letter is not sufficient to discount the testimony of the Landlord, given that the Tenant could not categorically deny writing this letter and she could not determine, with complete certainty, that she did not sign the letter.

I note that I do not have the expertise to determine whether the signature on the letter dated May 09, 2011 belongs to the Tenant. In the absence of evidence from a handwriting analyst, I find that I have insufficient evidence to conclude that the letter was not signed by the Tenant.

In determining the end date of the tenancy I was also influenced by the Proof of Service that was submitted in evidence. I find this Proof of Service, which appears to be signed by a third party, further corroborates the Landlord's version of events.

In determining the end date of the tenancy I was also influenced by the invoice from the locksmith, dated May 27, 2011. I find it unlikely that the Landlord would wait until May 27, 2011 to change the locks if the rental unit had been vacated in April.

As I have determined that the Tenant occupied the rental unit in May of 2011 and she is required to pay rent when it is due, pursuant to section 26 of the *Residential Tenancy Act (Act)*, I find that she must pay the Landlord \$1,800.00 for unpaid rent from May.

On the basis of the evidence of the Landlord and in the absence of evidence to the contrary, 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. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*, which was \$301.20 in cleaning costs.

Section 37(2) of the *Act* does not require tenants to repair damage that arises from "normal wear and tear". On the basis of the photographs submitted in evidence, which show relatively minor scratches on the cupboard doors/drawers, and on the Landlord's testimony that the cupboards had some scratches prior to the start of the tenancy I find that the damage to the drawers/doors constitutes normal wear and tear. As the Tenant is not obligated to repair normal wear and tear, I dismiss the Landlord's claim for compensation for repairing the cupboards.

On the basis of the evidence of the Landlord and in the absence of evidence to the contrary, I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to leave the walls clean and undamaged at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*. In these circumstances, I find it reasonable that

the Landlord be compensated for the 12 hours it took to clean and repaint the walls, at an hourly rate of \$20.00, which equates to \$240.00.

On the basis of the testimony of the Landlord and the invoice from the appliance repair company, I find that the dishwasher door was damaged at the end of the tenancy. I find this evidence more compelling than the hearsay evidence provided by the Agent for the Tenant regarding this claim. In determining this matter, I find it highly unlikely that the Landlord would repair the door if it had been functioning properly. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to repair the damaged door and I find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*, which are \$207.03.

On the basis of the testimony of the Landlord and the invoice from the locksmith, I find that the keys were not returned at the end of the tenancy. I find this evidence more compelling than the hearsay evidence provided by the Agent for the Tenant regarding the return of the keys. In determining this matter, I find it unlikely that the Landlord would replace the locks if the keys had been returned. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to return all of the keys to the rental unit and I find that the Landlord is entitled to compensation for damages that flow from the Tenant's failure to comply with the *Act*, which are \$120.96.

I find that the Landlords application has merit and that the Landlord is entitled to recover the fee for filing fee this Application for Dispute Resolution.

Conclusion

The Landlord is has established a monetary claim of \$2,719.19, which includes \$1,800.00 in unpaid rent, \$869.19 in damages, and \$50.00 for filing the Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I permit the Landlord to retain the security deposit, of \$900.00, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$1,819.19. 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: April 30, 2013

Residential Tenancy Branch