



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, 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 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 to recover the security deposit.

The Landlord stated that on August 13, 2015 the Application for Dispute Resolution and the Notice of Hearing were mailed to an incorrect address provided by the Tenant. She stated that on August 29, 2015 the Application for Dispute Resolution and the Notice of Hearing were mailed to each Tenant at the address provided on the Tenant's Application for Dispute Resolution, via registered mail. The Landlord cited two tracking numbers that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

The Landlord submitted numerous documents and photographs to the Residential Tenancy Branch. She stated that on February 13, 2015 all of the documents/photographs were personally served to the male Tenant. In the absence of evidence to the contrary, I accept the documents/photographs were served to the Tenant in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord stated that this tenancy began on September 01, 2012 and ended on July 31, 2014. She stated that the Tenant agreed to pay monthly rent of \$2,600.00 and that the Tenant paid a security deposit of \$1,300.00. A copy of the tenancy agreement was

submitted in evidence, which indicates that a security deposit of \$2,600.00 was required, which the Landlord stated was recorded in error.

The Landlord stated that a condition inspection report was completed at the beginning and the end of this tenancy, a copy of which was submitted in evidence. The Tenant signing the report at the end of the tenancy declared that she did not agree with the content of the report.

The Landlord is seeking compensation, in the amount of \$137.00, for repairing a variety of holes in the walls that she says were damaged during the tenancy. The Landlord is seeking compensation, in the amount of \$210.00 for repainting the master bedroom, which needed to be repainted as a result of repairs to the wall. The Landlord submitted several photographs that show damaged areas that the Tenant has partially repaired, which included significant damage to the master bedroom wall

The Landlord is seeking compensation, in the amount of \$480.00, for repainting two rooms the Tenant had painted a different colour without permission from the Landlord. The Landlord submitted several photographs that show the rooms had been painted with bright colours.

The Landlord is seeking compensation, in the amount of \$80.00, for repainting one side of the hallway, which required repainting as a result of damage. The Landlord submitted several photographs that show areas on the wall that had been repaired, but not repainted.

The Landlord is seeking compensation, in the amount of \$70.00, for repainting the kitchen, which required repainting as a result of marks on the walls. The Landlord submitted a photograph of a mark on a kitchen wall.

The Landlord is seeking compensation, in the amount of \$240.00, for removing mould from the ceiling in the master bedroom ensuite and repainting that ceiling. The Landlord stated that the bathroom was not equipped with a fan and that Tenant was informed that they should open the window when showering.

The Landlord stated that she believes the rental unit was last painted in 2008.

The Landlord is seeking compensation, in the amount of \$30.00, for repairing a kitchen drawer. The Landlord submitted a photograph of the drawer with a missing front. The Landlord is seeking compensation, in the amount of \$150.00, for replacing the locks on the front and rear doors. The Landlord submitted a photograph of the rear door, which was missing the door handle. The Landlord stated that the Tenant removed the door handle so the Landlord had to replace it, although the dead bolt was still intact. She stated that two locks on the front door and the deadbolt on the rear door were also replaced for security reasons.

The Landlord is seeking compensation, in the amount of \$90.00, for cleaning the carpets. The Landlord submitted several photographs that show the carpet required cleaning.

The Landlord is seeking compensation, in the amount of \$100.00, for replacing the grout around the bathtub and kitchen sink. The Landlord submitted photographs that show the caulking around the bathtub and kitchen sink is stained.

The Landlord is seeking compensation, in the amount of \$50.00, for removing garbage and personal items left at the rental unit at the end of the tenancy. The Landlord submitted photographs that show several items were left at the rental unit.

The Landlord is seeking compensation, in the amount of \$300.00, for replacing and painting two closet doors. The Landlord stated that the doors had been painted a colour that was not approved by the Landlord and the doors were damaged.

The Landlord submitted a bill for all of the aforementioned repairs which indicates the Landlord was charged these amounts.

The Landlord is seeking compensation, in the amount of \$315.00, for replacing a security grate for a window. The Landlord stated that the grate was installed on one of the windows at the start of the tenancy and was missing at the end of the tenancy. The Landlord submitted a photograph of a window when the grate was still installed and an estimate that indicates the grate can be installed for \$315.00.

The Landlord is seeking compensation, in the amount of \$126.00, for removing additional garbage. She stated that the Tenant left too much garbage in the garbage bins so the city would not remove the garbage. The Landlord submitted photographs of the garbage bins which have labels on them advising the bins are overfull; that improper items have been discarded in the bins; and that at least one of the bins is not being emptied. The Landlord submitted a receipt to show that \$126.00 was paid to dispose of garbage.

The Landlord is seeking compensation, in the amount of \$300.00, for repairing the lawn which the Landlord contends was damaged by a trampoline. The Landlord submitted photographs of the lawn with the trampoline on it and a photograph of the lawn after the trampoline had been removed. The Landlord stated that they hire a gardener on a monthly basis to care for the lawn and he told the Landlord he will charge an additional \$300.00 for repairing the lawn.

The Landlord is seeking compensation, in the amount of \$288.92, for cleaning the rental unit. This claim includes the cost of cleaning supplies and wages. The Landlord stated that the rental unit required cleaning however no photographs were submitted to show cleaning was required, with the exception of the carpet, nor was there a mention of the need to clean on the condition inspection report completed at the end of the tenancy.

Analysis

On the basis of the testimony of the Landlord, I find that the Tenant paid a security deposit of \$1,300.00, although the tenancy agreement indicated a \$2,600.00 deposit was required. In reaching this conclusion I note that the Tenant is seeking the return of the security deposit, in the amount of \$2,600.00, but it is not clear if the claim is simply for the return of a deposit of \$2,600.00 or if the claim is for double a deposit of \$1,300.00 in accordance with section 38(4) of the *Act*. In the absence of evidence from the Tenant, I find it reasonable to rely on the testimony of the Landlord.

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.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to fully repair damage to the walls that occurred during the tenancy. I therefore find that the Landlord is entitled to compensation for repairing the damage, which was \$137.00. In some circumstances, the Landlord would also be entitled to compensation for the cost of painting the damaged walls.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. As the Landlord believes the rental unit was last painted in 2008, I find that the paint in the rental unit has exceeded its life expectancy and that the Landlord is, therefore, not entitled to the cost of repainting the unit.

I find that the mould on the master bedroom ensuite is at least partially due to the fact a bathroom fan has not been installed in the bathroom. Section 7 of the *Act* requires landlords to take whatever steps are reasonable to minimize losses. As the mould in the bathroom could have been prevented by installing a bathroom fan, I find that the Tenant is not obligated to repair the mould in the bathroom.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the drawer that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for repairing the damage, which was \$30.00.

On the basis of the testimony of the Landlord, I find that the Landlord replaced two locks on the front door and the deadbolt on the rear door for security reasons. As the Act does not require a tenant to replace or change locks at the end of the tenancy, I find that the Landlord is not entitled to compensation for replacing these locks.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace the door handle on the rear door that was removed during the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the door handle. The evidence shows that the Landlord paid \$150.00 to replace four locks. I therefore find it reasonable to conclude that the Landlord paid \$37.50 to replace the rear door handle and I award compensation in this amount.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpet in reasonably clean condition. I therefore find that the Landlord is entitled to compensation for repairing the damage, which was \$90.00.

Section 37(2) of the *Act* requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. On the basis of the photographs submitted in evidence, I find that the staining on the caulking/grout around the kitchen sink and bathtub is typical of staining that occurs with two years of use. I therefore find this is reasonable wear and tear and that the Tenant is not obligated for replacing the caulking/grout.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to remove all garbage and personal items from the rental unit at the end of the tenancy and/or the Tenant disposed of garbage incorrectly in curbside garbage bins. I therefore find that the Landlord is entitled to compensation for the \$50.00 the Landlord paid to one person and the \$126.00 paid to a second person for removing garbage.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair/repaint the closet doors that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for repairing the damage, which was \$300.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace the security grate in the window that was removed during the tenancy. I therefore find that the Landlord is entitled to compensation for replacing the grate, which will be \$315.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the lawn that was damaged by a trampoline placed on the lawn during the tenancy. In addition to establishing that the Tenant damaged the lawn, the Landlord must also accurately establish the cost of

repairing the damage. In these circumstances, I find that the Landlord failed to establish the cost of repairing the lawn. 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 \$300.00 to repair the lawn. I therefore dismiss the Landlord's claim for compensation for repairing the lawn.

I find that the Landlord submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition, as is required by section 37(2) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of photographs that show additional cleaning was required, with the exception of the carpet, and by the fact the condition inspection report completed at the end of the tenancy does not declare there was a need for cleaning. Although I accept that the Landlord completed additional cleaning at the end of the tenancy, I find it entirely possible that the Landlord opted to clean the rental unit to bring it to a higher standard of cleanliness than is required by the *Act*. I therefore dismiss the Landlord's claim for cleaning costs.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,135.50, which is comprised of \$1,085.50 in damage and \$50.00 in compensation for fee paid to file this Application. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the security deposit of \$1,300.00 in full satisfaction of this monetary claim.

The Landlord must return the remainder of the security deposit, which is \$164.50, and I grant the Tenant a monetary Order for this amount. In the event 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: March 04, 2015

Residential Tenancy Branch