



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

A hearing was convened on December 20, 2016 to consider the merits of 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 or utilities, for a monetary Order for damage, to keep all or part of the security deposit/pet damage deposit, and to recover the fee for filing this Application for Dispute Resolution.

On the summary of financial claims submitted by the Landlord declared that she is not seeking compensation for unpaid utilities.

The Landlord stated that on June 23, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

The hearing on December 20, 2016 was adjourned for reasons outlined in my interim decision of December 21, 2016. The hearing was reconvened on January 23, 2017 and was concluded on that date. The Tenant did not attend the reconvened hearing and the proceedings continued in his absence.

On November 24, 2016 the Landlord submitted 35 pages of evidence to the Residential Tenancy Branch. At the hearing in December the Landlord stated that these documents were mailed to the Tenant on, or about, December 09, 2016. The Landlord cited a Canada Post tracking number that corroborates this statement. The Canada Post website shows that this package is waiting to be picked up by the recipient.

At the hearing in December the Tenant stated that he has not received this evidence package, although he has not checked his mail recently. At the hearing the Tenant stated that he was able to pick up this package on December 20, 2016 and he was directed to do so. The Landlord stated that this evidence was not returned to her so she presumes it was received by the Tenant. In the absence of evidence to the contrary I

find that this evidence was served to the Tenant and it was accepted as evidence for these proceedings.

On December 03, 2016 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were emailed to the Landlord in June of 2016. The Landlord denied receipt of these documents. As the *Residential Tenancy Act (Act)* does not permit parties to serve evidence via email and the Landlord does not acknowledge receipt of this evidence, it was not accepted as evidence for these proceedings.

On January 11, 2017 the Tenant submitted one page of evidence to the Residential Tenancy Branch. The Landlord stated that she received this document, by express mail, on January 21, 2017. On the basis of the undisputed evidence I find that the Tenant's evidence was not mailed at least two weeks before the date of the reconvened hearing, as was required by my interim decision. As this evidence was not received by the Landlord until two days prior to the hearing, I decline to consider this evidence during this adjudication. In determining that the evidence should not be accepted I was heavily influenced by the fact the evidence was not served in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure nor was it served in accordance with the timelines outlined in my interim decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the pet damage deposit and security deposit?

Background and Evidence

The Landlord stated that:

- the tenancy began on October 01, 2015;
- the rental unit was fully vacated on June 20, 2016;
- the Tenant agreed to pay monthly rent of \$,1100.00 by the first day of each month;
- the Tenant paid a security deposit of \$550.00;
- the Tenant paid a pet damage deposit of \$550.00;
- an initial condition inspection report was completed on October 25, 2016;
- there was a delay in completing the condition inspection report at the beginning of the tenancy as the parties were having difficulty finding a mutually convenient time to meet;
- a final condition inspection report was completed on June 10, 2016; and
- the Tenant's forwarding address was recorded on the condition inspection report on June 10, 2016.

The Landlord is seeking compensation, in the amount of \$750.00, for replacing the flooring. The Landlord stated that an unknown liquid was spilled on the floor of the rental unit during the tenancy, which damaged the floor. She stated that her insurance company replaced the flooring but she is seeking to recover the \$750.00 deductible she paid. The Landlord submitted poor quality photographs of the floor. The Landlord submitted an invoice that indicates she was charged a \$750.00 deductible to replace the flooring.

The Landlord is seeking compensation, in the amount of \$1,785.00, for painting the rental unit. The Landlord stated that the rental unit needed painting because the Tenant had been smoking unknown substances in the rental unit. The Landlord submitted a letter from a restoration company, in which the technician refers to the odor. The Landlord submitted an invoice that indicates she was charged a \$1,785.00 for painting the rental unit with paint designed to remove odors.

The Landlord stated that the two bedrooms in the rental unit were painted just before the start of the tenancy. The Landlord stated that the rest of the rental unit was painted about 18 months prior to the start of the tenancy.

The Landlord is seeking compensation, in the amount of \$136.54, for replacing blinds in the rental unit. The Landlord stated that the Tenant's dog damaged three sets of blinds in the unit during the tenancy. The Landlord submitted a receipt to show that she paid \$121.91 to replace the blinds, plus tax.

The Landlord is seeking compensation, in the amount of \$115.12, for cleaning the rental unit. The Landlord stated that the rental unit needed cleaning at the end of the tenancy. The Landlord submitted a letter from a restoration company, in which the technician refers to the need to clean the window sills. The Landlord submitted a cheque she wrote to a third party for cleaning the unit and disposing of garbage, in the amount of \$105.00. The Landlord also submitted an invoice for garbage disposal, in the amount of \$12.20.

The Landlord is seeking compensation, in the amount of \$25.00, because the Tenant was provided with three keys at the start of the tenancy and only one key was returned at the end of the tenancy. The Landlord stated that she did not submit a receipt of the cost of copying keys but she thought there was a clause in the addendum to the tenancy agreement that required the Tenant to pay a fee of \$25.00 if keys were not returned. The Landlord was unable to locate this clause in the addendum that was submitted in evidence when it was discussed during the hearing.

Analysis

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 damage or loss occurred; establishing 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 repair the flooring that was damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the \$750.00 deductible she paid to the insurance company for replacing the flooring.

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 eliminate the odor in the rental unit and I find that the Landlord is entitled to compensation for painting the unit for the purposes of eliminating the odor.

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 evidence shows that the two bedrooms in the rental unit were painted at the beginning of the tenancy and I therefore find that the paint in those rooms was approximately 10 months old at the end of the tenancy. The evidence shows that the remainder of the rental unit was painted 18 months prior to the start of the tenancy and I therefore find that the paint in those areas was approximately 28 months old at the end of the tenancy. On average, I find that the age of the paint in the unit was 19 months old at the end of the tenancy.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. As the paint in the unit was, on average, 19 months old at the end of the tenancy, I find that the paint in the living room had depreciated by approximately 40% and that the Landlord is entitled to 60% percent of the cost of repainting the rental unit, which is \$1,071.00.

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 blinds that were damaged during the tenancy. I therefore find that the Landlord is entitled to compensation for the \$136.54 she paid to replace the blinds, which includes tax.

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 rental unit in reasonably clean condition at the end of the tenancy. As the Landlord has submitted evidence to show that she incurred costs of more than \$115.12 for cleaning the rental unit, I find that she is entitled to recover the full amount of her claim for \$115.12.

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 return all of the keys to the rental unit at the end of the tenancy. In addition to establishing that a tenant failed to comply with

the *Act*, a landlord must also accurately establish the cost of remedying that breach. I find that the Landlord failed to establish the true cost of replacing the two keys that the Tenant failed to return. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence that establishes it cost \$25.00 to copy two keys or that there is a clause in the addendum to the tenancy agreement that requires the Tenant to pay \$25.00 if keys are not returned. As the Landlord has not established the cost of replacing two keys, I dismiss the claim for replacing the keys.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,172.66, which includes \$2,072.66 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit of \$1,100.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$1,072.66. In the event the Tenant does not voluntarily 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 *Act*.

Dated: January 24, 2017

Residential Tenancy Branch