



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, MNRL-S, FFL

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, 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 on October 17, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch on October 18, 2018, via registered mail. The Tenants acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On January 16, 2019 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on January 16, 2019. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted has been reviewed but it is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided

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

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on January 01, 2018
- the Tenants agreed to pay monthly rent of \$1,558.00 by the first day of each month;
- the Tenants paid a security deposit of \$779.00;
- the Tenants paid a \$10.00 deposit, although they cannot agree whether it was for a parking tag or a key fob;
- the Landlord did not have written authorization to retain any portion of these deposits;
- the deposits have not been returned;
- the Tenants only paid \$450.00 in rent for June of 2018;
- on June 04, 2018 the Landlord served the Tenants with a Ten Day Notice to End Tenancy;
- the Ten Day Notice to End Tenancy declared that the Tenants must vacate the unit by June 17, 2018
- the female Tenant informed the Landlord she would like to continue living in the rental unit and that she was trying to pay the overdue rent for June of 2018;
- the Tenants were unable to pay the rent for June;
- on July 03, 2018 the Tenant informed the Landlord, via email, that they had vacated the rental unit; and
- the Landlord did not make any attempt to schedule a time for the Tenants to participate in a final inspection of the rental unit.

The female Tenant stated that the rental unit was vacated on June 30, 2018. The Agent for the Landlord stated that she does not know when the rental unit was vacated.

The Landlord is seeking compensation for unpaid rent, in the amount of \$1,108.00, for June of 2018. The Landlord is also seeking compensation, in the amount of \$150.77, for the period between July 01, 2018 and July 03, 2018.

The Landlord is seeking compensation, in the amount of \$120.00, for cleaning the carpet in the rental unit. The Agent for the Landlord stated that the carpets required cleaning at the end of the tenancy. The female Tenant stated that the carpets did not require cleaning at the end of the tenancy. The Agent for the Landlord stated that the photographs she submitted in evidence do not show that the carpets required cleaning.

The Landlord is seeking compensation, in the amount of \$42.00, for cleaning the rental unit. The Agent for the Landlord stated that the entire suite required cleaning at the end of the tenancy. The female Tenant stated that the rental unit did not require cleaning at the end of the tenancy. The Agent for the Landlord stated that no photographs were submitted that show that the unit required cleaning.

The Landlord is seeking compensation, in the amount of \$54.49, for repairing blinds in the rental unit. The Agent for the Landlord and the Tenants agree that some of the slats were bent on the blinds. The female Tenant stated that she believes they could simply be bent back into place and the Agent for the Landlord stated that they could not be repaired. The Agent for the Landlord stated that the Landlord purchases these blinds in bulk and that the Landlord was therefore unable to submit proof of the cost of the blinds.

The Landlord is seeking compensation, in the amount of \$107.00, for repairing walls in the rental unit. The Agent for the Landlord and the Tenants agree that the walls were in good condition at the start of the tenancy and that they were damaged at the end of the tenancy in various locations. The Landlord submitted photographs of the damage to the walls.

The Agent for the Landlord stated that the Landlord paid \$32.00 for paint; that the paint is purchased in bulk, and that the Landlord was therefore unable to submit proof of the cost of the paint. She stated that the walls were repaired and painted by employees of the Landlord and that it took approximately seven hours to repair/paint the walls, for which the Landlord is seeking \$75.00.

The Tenant contends that the cost of repairing the walls is excessive. She stated that she attempted to repair some of the damage to the walls but she inadvertently used the incorrect color of paint.

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 Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,558.00 by the first day of each month and that the Tenants still owe \$1,108.00 in rent for June of 2018. As the Tenants were required to pay rent when it was due on June 01, 2018, pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$1,108.00 in rent for June of 2018.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was served to the Tenants on June 04, 2018, which declared that they must vacate by June 17, 2018.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenants exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenants accepted that the tenancy ended on June 17, 2018.

As the Tenants did not vacate the rental unit on June 17, 2018, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between June 17, 2018 and June 30, 2018, I find that the Landlord has been fully compensated for that period.

On the basis of the evidence of the Tenants and in the absence of evidence to the contrary I find that the rental unit was vacated on June 30, 2018. I therefore find that the Tenants were not obligated to pay rent, on a per diem basis, for the first three days in July of 2018.

I find that the Tenants fundamentally breached the tenancy agreement when the Tenants did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when the Tenants did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for July 01, 2018. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it experienced between July 01, 2018 and July 03, 2018, in the amount of \$150.77. I am unable to award compensation for lost revenue in a greater amount, as the Landlord has only applied for \$150.77.

I find that the Landlord submitted insufficient evidence to establish that the carpets or the rental unit required cleaning at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that they required cleaning or that refutes the female Tenant's testimony that they did not require cleaning. As the Landlord failed to establish the unit/carpets needed cleaning I dismiss the Landlord's claim for cleaning the unit/carpet.

On the basis of the undisputed evidence I find that some of the slats in the blinds were bent during the tenancy. I find it likely that the Tenants would have simply bent them back into place if they could have been repaired in that manner, as the Tenants contend. I find it more likely that they could not be repaired in that manner and I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the blinds.

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 repairing the damage to the blinds. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$54.49 to repair the blinds. When receipts are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present the receipts. I find that a receipt for the bulk purchase of the blinds should have been available to the Landlord, with reasonable diligence.

As the Landlord failed to establish the true cost of replacing the blinds, I dismiss the Landlord's claim for replacing the blinds.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the damage to the walls that occurred during the tenancy.

In these circumstances, I find that the Landlord failed to establish the true cost of the paint used to repair the walls. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Landlord's statement that it cost \$32.00 for paint. I find that a receipt for the bulk purchase of the paint should have been available to the Landlord, with reasonable diligence. As the Landlord failed to establish the true cost of the paint, I dismiss the Landlord's claim for the cost of the paint.

I find that the Landlord's claim of \$75.00 for wages paid to employees is a reasonable claim to repair the damage depicted in the photographs and I grant the Landlord's claim of this amount.

In adjudicating the claims for damages I have placed no weight on the condition inspection report that was completed by the Landlord at the end of the tenancy, as the Landlord did not provide the Tenants with an opportunity to complete a final inspection of the unit at the end of the tenancy.

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 \$1,433.77, which includes \$150.77 in lost revenue, \$1,108.00 in unpaid rent, \$75.00 for repairing/painting walls; 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 Tenants' deposit of \$789.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$644.77. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, 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: February 12, 2019

Residential Tenancy Branch