



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied to retain the security deposit and for compensation for damage or loss. The tenant has applied for the return of the security deposit and for compensation for damage or loss.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for damages and for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A letter to the tenants dated July 30, 2009 stating that because of receiving the tenants' notice to end the tenancy the landlord will be showing the rental unit everyday between 8:00 a.m. and 9:00 p.m. from August 4, 2009 on until the rental unit is re-rented;
- A handwritten description of landlord's financial claim;
- An invoice from a paint supply store for \$290.41;
- A copy of a cheque issued by the tenant marked as insufficient funds;
- A copy of the Condition Report showing both move in conditions and move out conditions; and
- A copy of the tenancy agreement signed by the parties on February 3, 2006 for a one year fixed term tenancy beginning on March 1, 2006 that converted to a month to month tenancy on March 1, 2007 for a final rent of \$1011.08 per month due on the 1st of the month. A security deposit of \$487.50 was paid on March 2, 2006.

The tenant submitted into documentary evidence the following:

- A copy of a cleared cheque in the amount of \$390.00 to a moving company;
- A summary of issues regarding return of security deposit;
- A copy of the Condition Report showing both move in conditions and move out conditions;
- Several photographs showing the condition at move in and at move out;
- A summary of issues regarding loss of use of premises;
- A copy of the tenant's letter to the landlord giving notification to end the tenancy and stating availability for contact and for showings to potential renters;
- A letter to the tenants dated July 30, 2009 stating that because of receiving the tenants' notice to end the tenancy the landlord will be showing the rental unit everyday between 8:00 a.m. and 9:00 p.m. from August 4, 2009 on until the rental unit is re-rented;
- Tenant's response of August 1, 2009 to the landlord's letter dated July 30, 2009
- Chronological listing of events;
- Follow up letter to landlord dated August 13, 2009 regarding showing of the rental unit to potential renters; and
- Several photographs taken by the tenant's security camera of the landlord and agent showing the rental unit on dates and times without contact to the tenant.

In his written submission the landlord is claiming for patching and painting and for N.S.F. charges and late payment fees outstanding from May of 2007. The tenant does not contest the N.S.F. charges or late payment fees.

The tenant does contest the landlord's claim to patching and painting. As per the Condition Report, originally completed for the move in on February 28, 2006 the walls required painting at that time. The tenant was given paint to complete the painting.

The tenant confirmed that he had painted the rental unit and in April 2009 the current property manager partially painted the kitchen. The tenant contends that he should not be held responsible for painting a rental unit that had not been recently painted when the tenancy began.

The landlord contends that he was compliant with Section 29 of the Act when he gave the tenants notice that he may be entering the rental unit everyday between the hours of 8:00 a.m. and 9:00 p.m. The tenant contends that he tried to work out some alternate arrangements with the landlord that would have been less obtrusive.

The tenant has submitted a monetary claim in the amount of \$2,065.47 for loss of quiet enjoyment and compensation for additional costs incurred during the month of August but has failed to outline how the claim has been broken down. The landlord's claim is for \$1033.41 less the security deposit and interest held for a total of \$529.06.

Analysis

Section 37 of the *Act* states a tenant who is vacating a rental unit must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The tenants started the tenancy with a Condition Report stating that the walls needed painting and since the tenants have lived in the rental unit for 3 and ½ years. The Residential Tenancy Policy Guidelines state the useful life of paint is 4 years.

Since the rental unit required painting at move in and the tenancy was almost 4 years in duration, I find the tenant is not responsible for the painting of the rental unit. As the tenant did not contest the claim against the security deposit for late and N.S.F. charges, I find the landlord is entitled to these charges in the amount of \$43.00.

Despite the landlord's contention that he is compliant with Sections 28 and 29 of the *Act* regarding providing the tenant's notice to enter the rental unit everyday between 8:00 a.m. and 9:00 p.m. I find the landlord's contention unreasonable.

Quoting from "A Guide for Landlords and Tenants in British Columbia" section 10.6.3 states

"When a rental unit is for sale or rent, the landlord must have the tenant's permission or give the tenant proper written notice before showing the rental unit. The tenant and landlord can agree to a schedule of viewing times included in a single notice. If there is no agreement, the landlord must give proper notice each time before showing the rental unit. The landlord must keep in mind that the tenant is entitled to reasonable privacy and freedom from unreasonable disturbance."

I find the landlord's expectations of access to the rental unit for 13 hours per day every day until the rental unit is rented out is unreasonable and is a misinterpretation of Sections 28 or 29.

I agree with the landlord's determination that the security deposit and interest held totals \$504.35. I find the tenant is entitled to compensation for the loss of quiet enjoyment in the amount of the monthly rent for August 2009 or \$1011.08 and for the return of the security deposit less the \$43.00 in N.S.F. charges and late fees or \$451.35.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$1,602.43** comprised of \$1,011.08 August 2009 rent returned and the \$50.00 fee paid by the Landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: December 14, 2009.

Dispute Resolution Officer