



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This was the hearing of applications by the landlord and the tenant. The hearings were heard together by conference call. The landlord was represented by its resident manager. The named tenant participated in the hearing and I heard testimony from the landlord's witness. The landlord claimed payment of the sum of \$1548.00 and the tenant applied for the return of her security deposit, including double the amount of the deposit.

Issues(s) to be Decided

Is the landlord entitled to a monetary order and if so, in what amount?

Is the tenant entitled to the return of her deposit and to double the amount of the deposit?

Background and Evidence

The rental unit is an apartment in an apartment building in Vancouver. The tenant K.M. moved into the rental unit in March, 2006. She arranged to share the apartment with C.D. The landlord insisted that there be a new tenancy agreement naming both K.M. and C.D. as tenants. A new agreement was prepared by the landlord and signed by each tenant. Monthly rent was \$935.00 although the copy agreement produced by the landlord contained the handwritten notation. "Rent \$960.00 March 1/ 2010". K.M.'s original security deposit of \$450.00 was increased to \$467.50.

The tenant C.D. moved out of the rental unit in April, 2010. According to K.M. she told the landlord's representative in early May that she intended to move out at the end of May. She did not give the landlord written notice until May 29, 2010. She moved out on May 30, 2010. The tenant said that she gave the landlord her forwarding address on a piece of paper along with the three key fobs for the apartment on May 30th which was a Sunday, a day when the resident manager was not working, by putting them in a zip-lock bag and dropping them through the mail slot of the landlord's office located in the rental property.

The landlord's representative testified that she did not receive any notice that the tenant was moving out until she received the written notice on May 29, 2010. The landlord was unable to re-rent the unit until July, 2010. The landlord's representative testified that the tenant painted one wall in the rental unit black and she painted two other walls deep red. The landlord claimed loss of rent for June in the amount of \$960.00, a painting charge of \$400.00, \$81.00 for three hours of cleaning \$7.00 for replacement light bulbs and \$150.00 for carpet cleaning less \$50.00 for a returned door fob for a total of \$1,548.00. The landlord testified that she conducted a condition inspection of the rental unit on January 1, 2010 with both tenants and she conducted a move-out inspection with K.M. on or about June 3, 2010. She said that the tenant K.M. returned a key fob and signed the condition inspection form authorizing the landlord to retain her security deposit. She said that she did not receive the tenant's forwarding address until it was provided to the landlord by a collection agency on June 20, 2010. The landlord's witness, S.S. testified that a collection agency telephoned and gave her the tenant's address on June 20, 2010.

The tenant testified that no condition inspection has ever been conducted by the landlord. She said that the signature on the condition inspection form dated May 31, 2010 and authorizing the landlord to retain her security deposit was not her signature and was not placed there by her. The tenant said emphatically that there was no condition inspection on January 1, 2010 which was New Years Day and her Birthday. She said that she moved into the rental unit in 2006 when she assumed a lease from

the former tenant of the unit and the walls were painted black and red at that time. There was no condition inspection in 2006, nor one on January 1, 2010. She moved out and returned keys on May 30th and did not meet the resident manager either on May 31st or on June 3rd. The tenant submitted that the writing on the condition inspection form bore no resemblance to her signature on other documents.

The tenant has claimed payment of the sum of \$935.00 being double the amount of her security deposit and \$150.00 being the deposit to be returned for three door fobs for a total claim of \$1,085.00

Analysis and conclusion

The landlord did not explain why she made no notation on the condition inspection form said to be completed on January 1, 2010 that several walls were red and one was black, even though she admitted that the walls were painted those colours at the commencement of the tenancy. The notation as to wall colour did not appear until the landlord's representative filled in the move-out portion of the form said to be on May 31, 2010. I accept and prefer the tenant's evidence with respect to the move-out inspection to that of the landlord's representative. I do not accept that the tenant, given her evidence on this application, would have agreed to the retention of her deposit or that she would have acknowledged responsibility for re-painting the rental unit. The landlord's representative was unclear in her evidence on a number of points; she could not say with certainty when she met with the tenant or when the form was completed. She suggested that it was on June 3rd. But she had no explanations as to why it was dated May 31, 2010. I accept the tenant's evidence that she moved out on May 30, 2010 and dropped the key fobs through the office mailbox when she left. The tenant produced photographs of the rental unit that show that she expended some effort to clean the rental unit before she moved out. Whether or not the unit was cleaned to the landlord's standards, I find that after the cleaning she performed the tenant had the expectation that her deposit would be returned and I accept her testimony that she gave

the landlord her forwarding address in writing when she dropped off the keys and fobs on May 30, 2010.

The tenant claimed that she gave verbal notice that she was moving out and only provided written Notice on May 29, 2010. She moved out the next day. I find that the landlord is entitled to loss of revenue for the month of June due to the tenant's failure to give one month's written notice ending the tenancy. I award the landlord \$935.00 for loss of revenue instead of the \$960.00 claimed. This was a new tenancy that commenced January 1, 2010 and any rent increase before the anniversary of the commencement of the tenancy would constitute an illegal rent increase therefore I award only the amount of rent established by the agreement made on January 1, 2010 not the amount of \$960.00 said to apply two months after the commencement of the tenancy.

I deny the landlord's claim for painting because the landlord did not establish that the tenants painted the walls during their tenancy.

With respect to the claim for cleaning, the landlord did not provide photographs. The tenant's photographs show what appears to be a generally clean unit. I find that the landlord has not proven on a balance of probabilities, that cleaning was required and I deny this claim.

The tenant's photographs show some stains or soiling on the carpets. The tenant did not submit evidence to establish that she had the carpets cleaned at the end of the tenancy. It was a term of the tenancy agreement that the tenant must have the carpets professionally steam cleaned immediately prior to vacating the rental unit. I allow the landlord's claim for carpet cleaning in the amount of \$150.00. I allow the claim for replacing light bulbs in the amount of \$7.00.

The total of the amounts awarded to the landlord is the sum of \$1,092.00. The landlord is entitled to recover the \$50.00 filing fee paid for its application for a total award of \$1,142.00.

I accept the tenant's evidence that she provided the landlord with her forwarding address in writing when she dropped off keys at the landlord's office on May 30, 2010. The landlord did not return the tenant's security deposit or file an application for dispute resolution to claim it until July 20, 2010. I find that the tenant is entitled to the return of double the amount of her deposit pursuant to section 38(6) of the *Residential Tenancy Act* because the landlord failed to comply with the provisions of section 38 that required the landlord to either make a claim or return the deposit within 15 days of receiving the tenant's forwarding address which was given to the landlord on May 30, 2010.

Interest of \$15.56 has accrued on the original deposit of \$450.00. The increased deposit of \$467.50 with interest amounts to \$483.06. I award the tenant double the amount of the deposit; that amount plus the accrued interest equals \$950.56. The evidence from the parties about the return of key fobs was confusing. The tenant said that she returned three fobs. The deposit amount per fob was \$50.00. The landlord's representative did not agree that three keys were returned. According to the landlord only two deposits were paid for fobs in any event. I award the tenant \$100.00 only for the return of fobs. The tenant is entitled to recover the \$50.00 filing fee for a total award in her favour in the amount of \$1,100.56. Pursuant to section 72 of the *Act* I set off the award to the tenant against the amount awarded to the landlord. This leaves the net amount owing to the landlord of \$41.44 and I grant the landlord a monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: December 09, 2010.
