



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This hearing was convened in response to cross applications by the parties for dispute resolution.

The tenant filed on September 09, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of the security deposit (\$380) - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord filed on November 15, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for damages to the unit (\$700) – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant sworn evidence and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant evidence is as follows. The tenancy began August 01, 2004. The tenant vacated without written notice to end the tenancy, on August 31 and September 1, 2011, due to health related issues. On September 03, 2011, the landlord learned the tenant moved out on September 03, 2011 when the tenant returned the

keys and inspected the rental unit with the landlord. At the outset of the tenancy, the landlord had collected a security deposit from the tenant in the amount of \$380. At the beginning and end of the tenancy the parties conducted respective condition inspection reports. At the end of the tenancy the landlord acknowledges receiving \$215 cash from the tenant, determined by both parties that it was for cleaning charges.

The landlord provided a copy of the condition inspection report(s), which, according to the landlord states that the tenant, by their signature, agrees with the move out report - with the tenant claiming responsibility for \$700 in painting charges. The tenant disputes that the report reflects an agreement to the painting charges. The parties agree that the report displays a figure of \$700, and that it appears to have been crossed out and initialled by landlord's building manager / witness. The tenant explained that the both parties came to agreement respecting the painting charge of \$700, and that the landlord consequently thought differently of this charge and crossed it out and initialled it. The landlord provided the building manager as a witness. The witness acknowledged they received \$215 cash from the tenant for cleaning. The witness also stated that they made an inadvertent error in the \$700 figure, of an extra '0' and retraced the figure and initialled the compromised figure. At the hearing, the parties disagreed with one another's intentions at the time the report was signed. None the less, the parties signed the report and the tenant provided their forwarding address on September 03, 2011

The landlord did not challenge that they did not provide the tenant with a copy of the condition inspection report until recently, as part of their evidence submissions. The tenant requests the return of the security deposit. The landlord applies for it - to offset their application of damages to the unit.

The landlord applies for \$700 for painting of the unit. They claim that the tenant is a smoker; and, as a result the interior surfaces of the suite have a purported cigarette smoke film. The landlord pre-estimated the need to repaint the unit at \$700. The landlord provided a series of photographs purporting to depict that the walls of the suite contained smoke stains. The tenant disputes that the staining on the walls is smoke stains, as they claim they did not smoke inside the suite. However, the tenant does not dispute the unit was left unclean – for which they compensated the landlord for cleaning in cash. The landlord testified that the unit was not freshly painted at the outset of the tenancy, but that the paint in the unit was categorized as “good”. The landlord testified that they do not know when the rental unit was last painted.

Analysis

On the preponderance of all the evidence before this hearing, and on the balance of probabilities, I find the landlord did not provide the tenant with a copy of the inspection report conducted at the end of the tenancy, in accordance with **Sections 18** of the regulations and **Section 35** of the Act – the context of which can be referenced at www.rto.gov.bc.ca

Section 36 of the Act, in part, states as follows;

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the tenant did not provide the landlord with Notice to End the tenancy and therefore I find the tenant abandoned the rental unit. As a result, the landlord's right to claim the security deposit was not extinguished.

I find that despite the testimony of the landlord's witness, their testimony regarding the condition inspection report did not shed sufficient light on the ambiguity posed by the report regarding the charges for painting the rental unit. As the report is an instrument of the landlord, any ambiguity falls in favour of the tenant. I find that I prefer the tenant's account, that the parties discussed the charge for repainting, and that the landlord crossed out the charge in the report and initialled it. However, I find that the landlord's evidence clearly shows that the unit was left unclean, and I accept the evidence in this matter that the landlord accepted cash compensation for cleaning.

Residential Tenancy Policy Guideline 37 offers that the useful life of Finishes: painted interior surfaces are four (4) years. Given the length of this tenancy and the lack of re-painting for at least seven (7) years, and that the rental unit was not freshly painted when the tenant moved in, I find that the deficiencies in the painted walls as purported by the landlord are attributable to reasonable wear and tear, for which the tenant is not responsible. Therefore, **I dismiss** the landlord's claim for painting in the amount of \$700, without leave to reapply.

As I have dismissed the landlord's claim it is only appropriate that I return the original security deposit, along with any applicable interest, to the tenant.

The landlord owes the tenant \$380 plus applicable interest. As the tenant was successful in their application, they are entitled to recover their filing fee of \$50.

Calculation for Monetary Order

Security deposit	\$380.00
Filing Fees for the cost of this application	50.00
Total Monetary Award	\$443.45

Conclusion

I grant the tenant an Order under Section 67 of the Act for the amount of **\$443.45**. If necessary, this order may be filed in the 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: November 28, 2011

Residential Tenancy Branch