Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNSD MNDC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on May 9, 2104, to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on May 2, 2014, to obtain a Monetary Order for: the return of double her security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order?
2. Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on February 1, 2006 and switched to a month to month tenancy after January 31, 2007. Initially the Tenant was required to pay rent of $895.00 on the first of each

month which was subsequently raised to approximately $1,085.00 by the end of the tenancy. On January 4, 2006, the Tenant paid $438.00 as the security deposit and attended the move in inspection on February 1, 2006. The move out inspection was conducted on April 30, 2014, during which the Tenant provided the Landlord with her forwarding address.

The Landlord testified that they are seeking $88.48 for carpet cleaning plus $400.00 to prime the walls. The Landlord argued that sometime, several years prior to the end of the tenancy, the Tenant painted the rental unit with non-neutral paint colors, without the Landlord's written permission. The Landlord confirmed that they had been managing this property for the full length of this tenancy; and despite knowing that the Tenant had painted the unit without prior permission, they did not issue the Tenant a written notice to return the paint color to a neutral color. Rather, they chose to say nothing about the painting to the Tenant for several years, until the Tenant ended the tenancy, at which time they told her verbally to make sure the unit was returned to a neutral color.

In support of her claim, the Landlord submitted into evidence a quote for the painting claim, which was an estimate sent from a personal e-mail listing the company name in the signature block. No receipt was provided in support of the carpet cleaning claim; rather, the Landlord stated that they use the same company for all of their units so they are charged specific rates based on the number of bedrooms.

The Tenant testified that she was never told she could not paint the rental unit and she was never told or provided anything in writing prohibiting her from painting the unit. The Tenant argued that she was never told, verbally or in writing, that she had to repaint the unit a different color at the end of her tenancy, and she noted that it was not mentioned on the move out inspection report. She said that the Landlord never painted her suite during her tenancy, so she had the unit painted a beige color, except for one wall in the bedroom, by a professional painter.

The Tenant disputed the claim for carpet cleaning and argued that she had the carpet cleaned in March 2014.

In closing, the Landlord pointed to the tenancy agreement section 14 where it states at the sixth sentence as follows:

> *Painting, papering or decorating of the rental unit or residential property will be done only with the landlord's prior written consent and with landlord approved colours.*

The Landlord testified that the unit has since been painted; however, she did not submit proof such as the original invoice or proof of payment. The Landlord noted that she had submitted evidence of a cheque issued to the Tenant in the amount of $14.99 as refund of the security deposit. The Tenant admitted seeing either the cheque or a copy of it but was adamant that she had not cashed it.

The Tenant's claim was for double her security deposit as the Landlord refused to return it to her.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The applicant must meet all four criteria in order to establish a claim.

Landlord's Application

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

It was undisputed that the Tenant breached section 14 of the tenancy agreement when she painted the rental unit without the Landlord's written permission to do so. Therefore, the first criterion has been met, as listed above.

While the Landlord has submitted that a loss has been incurred when she had the unit repainted, she did not submit documentary evidence to support her statement, such as a receipt for payment or an actual invoice. Furthermore, while the walls in the unit were painted a different color by the Tenant, they were painted several years prior to the end of the tenancy. This was a cosmetic change to the walls and would not affect the use of the walls or the rental unit. That being said, I accept the argument that the walls were not painted the Landlord's colors, as required by the tenancy agreement and therefore, the Landlord has met the burden of criterion number 2.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

Upon review of the move in condition inspection report form I note that at the start of the tenancy in February 2006, the walls had "new paint". The Landlord did not pain this unit during the tenancy and the Tenant had repainted the walls several years prior to the end of this 8 year tenancy, at her own cost. The normal useful life of interior paint is 4 years, as per the *Residential Tenancy Policy Guideline 40.* Therefore, I find the depreciated value of the paint on the walls, at the end of this tenancy, was zero. Accordingly, based on the above, and in

absence of proof that the unit was recently repainted, I find there to be insufficient evidence to prove the Landlord suffered a measurable loss; and has therefore not met the burden of proof for criterion # 3.

The Landlord had knowledge that the Tenant painted the unit several years prior to the end of the tenancy; yet the Landlord chose to take no action to remedy the situation. Furthermore, there is no mention of the paint or the requirement to repaint the unit on the move out condition inspection report form. Therefore, I find the Landlord has failed to mitigate any loss resulting from the paint job and has therefore, not met the burden to prove criterion # 4.

Based on the above, I find the Landlord has submitted insufficient evidence to meet the test for damage or loss, and the claim for painting is dismissed, without leave to reapply.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Tenant has disputed the Landlord's claim for carpet cleaning costs and argued that she had the carpets cleaned in March, 2014, the month before the end of her tenancy. In the absence of any mention that the carpets required cleaning on the move out condition inspection report form and in the absence of a receipt to prove the carpets where in fact cleaned, I find the Landlord provided insufficient evidence to support her claim for carpet cleaning; and the claim is dismissed, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Tenant's Application

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended April 30, 2014 and the Landlord was provided the Tenant's forwarding address on April 30, 2014. Therefore, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than May 15, 2014. The Landlord filed her claim to retain the security deposit on May 9, 2014, within the required timeframe.

Based on the above, I find that the Landlord has complied with Section 38(1) of the *Act* and therefore, the Landlord is not subject to the doubling provision under Section 38(6) of the *Act.*

As noted above, the Landlord's claim has been dismissed in its entirety; therefore, the Landlord has no legal right to retain the Tenant's security deposit and interest. Although the Landlord has submitted evidence that a cheque for $14.99 was issued to the Tenant, the Tenant does not have the cheque and has not cashed it.

Accordingly, I award the Tenant the return of her full deposit and interest in the amount of **$453.47** ($438.00 + $15.47 interest).

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order for **$503.47** ($453.47 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

If the Landlord has proof from their bank that the Tenant had cashed the $14.99 payment, then the Landlord would be at liberty to deduct the $14.99 from the monetary order amount.

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: September 08, 2014

Residential Tenancy Branch