



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought authority to retain the Tenant's security deposit, recovery of the \$100.00 filing fee as well as other unspecified relief.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. What should happen to the Tenant's security deposit?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord testified as follows. She confirmed that the Tenant began living in the rental unit with her boyfriend May 3, 2014. The Landlord testified that the original rent was \$850.00 and was reduced to \$725.00 when the Tenant and her boyfriend separated. The Landlord testified that she initially took a security deposit in the amount

of \$425.00 and when the rent was reduced she returned the sum of \$62.50 and therefore continues to hold a security deposit in the amount of \$362.50.

The tenancy agreement was also introduced in evidence and which indicated that this four month fixed term tenancy was set to begin on September 1, 2015 and end on December 31, 2015.

The Landlord confirmed that the tenancy ended March 31, 2016 although the Tenant vacated the rental unit on approximately March 26, 2016. The Landlord confirmed that she received the Tenants' forwarding address in writing when she attended the rental unit.

The Landlord confirmed that a move in and move out condition inspection was conducted. A copy of this document was introduced in evidence.

The Landlord testified that the Tenant agreed to paint the rental unit as she liked painting. The Landlord testified that they agreed the Tenant would paint and the Landlord would take the cost of the paint off the rent.

The Landlord stated that she was surprised to see that the Tenant had painted the rooms very dark colours and some of the rooms were three different colours. She said "I supposed I shouldn't have assumed" that the Tenant would use reasonable colours.

The Landlord stated that she was "being stupid" in that she did not clarify what colours the rooms could be painted, and should have purchased the paint to ensure that it was not painted numerous colours.

The Landlord confirmed that the painting has now been done and it cost \$2,200.00 as the colours chosen by the Tenant were difficult to paint over.

The Landlord requested authority to retain the security deposit as well as recovery of the filing fee. She stated that she realized she could have been more clear with the Tenant about permitted colours and as she wasn't, she was prepared to simply retain the security deposit even though the cost to repaint was significantly more.

The Tenant testified as follows.

The Tenant stated that there was a miscommunication.

The Tenant confirmed that when the tenancy first began, she moved in with her boyfriend B.T. She further stated that it was within that initial tenancy that the painting occurred. She confirmed that she and B.T. did the painting in the rental unit. The Tenant stated that she spoke to the Landlord about the colours and whether she had any expectations and the Landlord did not express any restrictions on the colours permitted.

The Tenant stated that when B.T. moved out she gave the Landlord one month notice. She then stated that they agreed that the Tenant would continue residing in the rental unit at a reduced rate. She further stated that the Landlord asked her to fill out the condition inspection report and record the condition of the rental unit when the first tenancy began because a report had not been done at that time. This report as completed by the Tenant was introduced in evidence by the Tenant.

The Tenant further testified that the report provided by the Landlord in evidence was completed by the Landlord while the Tenant was not present. The Tenant further stated that the Landlord did not give her an opportunity to participate in the inspection.

The Tenant stated that she moved out March 27, 2016, spent two days cleaning and then handed over the keys on March 29, 2016. The Tenant stated that the Landlord asked for her forwarding address at that time.

The Tenant further stated that she paid rent to the Landlord up to and including March 31, 2016.

Analysis

After careful consideration of the testimony of the parties and the evidence before me, and on a balance of probabilities, I find that the Landlord's application should be dismissed.

The Landlord conceded that she gave the Tenant permission to paint the rental unit. She also confirmed that the cost of the paint was taken from the Tenant's monthly rent further confirming that the Landlord consented to the Tenant painting.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides as follows:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

I find that the Landlord explicitly consented to the Tenant painting by authorizing her to do so as well as paying for the materials.

Further, it is notable that the Landlord admits she told the Tenant she didn't mind a bit of colour; I find this communication to be too vague to convey any parameters in terms of the Landlord's expectations regarding the painting. Had the Landlord expected the Tenant to use particular colours or materials, she was able to express those expectations to the Tenant prior to the painting commencing. In failing to do so she failed to exercise due diligence.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the case before me, and while it is unfortunate the Landlord incurred considerable expense to repaint the rental unit, and has clearly suffered a loss, I am unable to find that this loss was of the Tenant's actions or neglect in *violation* of the *Residential Tenancy Act*, or the tenancy agreement as I find the Landlord gave the Tenant permission to paint the rental unit.

For these reasons I dismiss the Landlord's claim in its entirety.

I Order the Landlord to return the Tenant's security deposit in the amount of **\$362.50** forthwith.

The Tenant is granted a Monetary Order in the amount of the security deposit paid and must serve the Order on the Landlord. Should the Landlord fail to pay the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's application for authority to retain the Tenant's security deposit is dismissed. The Landlord consented to the Tenant painting the rental unit, paid for the materials, and failed to communicate any parameters or expectations regarding acceptable colours or techniques to the Tenant.

The Landlord must return the Tenant's security deposit in its entirety. The Tenant is granted a Monetary Order for the equivalent 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 23, 2016

Residential Tenancy Branch