



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, MNR, & MNSD.

Introduction:

This hearing dealt with an application by the landlord requesting a monetary claim related to non-payment of rent and damage to the rental unit. The landlord is also seeking to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Although the tenant was served with notice of the landlord's application and this hearing by registered mail, she did not appear. The hearing continued in her absence.

Background and Evidence:

This tenancy began on September 1, 2007 for the monthly rent of \$915.00. The tenant paid a security deposit of \$457.50 on August 16, 2007. Both the landlord and tenant participated in a move in condition inspection at the start of the tenancy.

The tenant gave late notice to vacate the rental unit in June 2008 and provided a forwarding address at that time. The landlord scheduled a move out condition inspection time for June 30, 2008. It appears that after learning that her notice to vacate was late the tenant requested that the notice be accepted for July 30, 2008.

Unknown to the landlord the tenant vacated the rental unit and allowed another individual to occupy the rental unit. The landlord learned of the new occupant after receiving noise complaints over the July 2008 long weekend. The occupant vacated the rental unit on July 7, 2008. The landlord completed a move out condition inspection on July 7, 2008 but did not provide any opportunity to the tenant to participate.

The landlord is seeking the following damages related to non-payment of rent and repairs to the rental unit:

Outstanding rent owed including \$25.00 late fee charge	\$425.00
Removal of debris and furniture	\$200.00
Cleaning for rental unit (15 hours @ \$17.00 per hour)	\$255.00
Wash and hanging of drapes	\$120.00
Cut grass and cleaning of yard	\$100.00
Painting of rental unit	\$500.00

Recovery of \$50.00 filling fee for this application	\$50.00
Total	\$1,650.00

In support of their application the landlord provided copies of the tenancy agreement, which included the term that the tenant was responsible for reasonable maintenance of the yard under section 16(13). The landlord also provided photographs showing the debris and furniture that was abandoned and the condition of the walls in the rental unit.

Respecting the request for costs associated with painting the rental unit the landlord confirmed that the unit was painted on August 31, 2007 just prior to the tenant occupying the rental unit. The landlord indicated that the walls required repairs and painting to return the unit to a neutral colour. As indicated in the photographs the walls were painted pink by the tenant.

Analysis and Reasons:

After careful consideration of the evidence submitted by the landlord I am satisfied that the costs claimed are reasonable and related to the tenant's failure to meet her obligation to return the rental unit to its original condition, less reasonable wear and tear. However, I am not fully satisfied that the landlord has shown that the claim for \$500.00 for painting has been established. The photographs provided by the landlord do not show significant damage to the walls or that the paint is in an unreasonable condition or colour.

I have no evidence before me as to whether the tenant had permission to paint the rental unit. Clause 16(17) of the tenancy agreement states that the tenant is not to make any alterations to the rental unit, including painting. I am left with determining whether the claim by the landlord is reasonable in the circumstances. The landlord must show that the walls required painting, even if I find that the tenant did breach the tenancy agreement.

On the balance of probabilities, and in careful review of the photographic evidence submitted by the landlord I am not satisfied that the walls required painting. The photographs depict a nice colour paint and undamaged wall surfaces. As a result I deny this portion of the landlord's application.

Therefore, I find that the landlord has established a total monetary claim for the sum of \$1,150.00. From this sum the landlord has requested to retain the tenant's security deposit plus interest in partial satisfaction. However, I find that the landlord failed to comply with section 35 of the *Act* which requires that the landlord provide the tenant with two opportunities to participate in the move out condition inspection. While the landlord provided the one opportunity for the end of June, a second opportunity should have been provided to the tenant. Having failed to provide this opportunity the landlord's right to claim against the tenant's security deposit is extinguished.

Conclusion:

I have found that the landlord has established a total monetary claim of \$1,150.00 against the tenant. Although the landlord's right to retain the tenant's security deposit has been extinguished, I Order pursuant to section 72 of the *Act* that the landlord's monetary claim of \$1,150.00 is offset by the tenant's security deposit plus interest of \$467.11.

I grant the landlord a monetary Order for the remaining balance of **\$682.89**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated September 23, 2008.