

DECISION AND REASONS

This hearing was convened upon the application of the landlord seeking:

1. A Monetary Order for compensation or damage to the unit.
2. An Order to be allowed to retain the security deposit.
3. An Order to recover the filing fee for the cost of this application.

I accept that the tenant was properly served with the Application for Dispute Resolution hearing package by way of registered mail.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached.

Background and Evidence

The landlord testified that he wished to reduce his claim to \$850.00 for costs incurred as follows:

Cleaning 12 hours x \$25.00 per hour	350.00
Re-Key Locks	100.00
Repaint damaged walls	400.00
Total	850.00

The landlord testified that the tenant left the rental unit without cleaning such that it required 12 hours to clean the unit. The landlord presented photographs of the rental unit. The landlord said that the rental unit had been completely repainted prior to this tenant's occupancy. Yet it was necessary to repaint some of the walls due to the damage caused by this tenant. The landlord testified that the move-in inspection was not done properly. The landlord testified that he did try to arrange for a move out inspection and he made several attempts to schedule the inspection but the tenant did not cooperate. Finally the landlord posted a notice of inspection to the rental unit door but the tenant still did not attend the inspection. Neither condition inspection report was presented in evidence. The landlord said the tenant failed to return the rental unit keys. It was therefore necessary to have the locks changed.

The agent said she was with the tenant when she moved in and they found food in the fridge and the rental unit was not clean. The agent for the tenant testified that she did not know if the tenant ever complained to the landlord about the condition of the rental unit at the time of her move in.

With respect to cleaning the landlord testified that when a previous tenant leaves a rental unit unclean he has cleaning staff who attend to clean the unit and charge the cleaning costs back to the previous tenant. In some cases, where his cleaning staff are not readily available and a new tenant wishes to move in immediately, the landlord will ask the tenant if they would be willing to clean the rental unit themselves and provide an invoice for time expended and supplies. The landlord testified that he pays the tenant's invoice and charges it back to the previous tenant. The landlord says this is their standard operating procedure. However, the landlord testified that there was no indication in his file if this was the case in this tenancy so he assumes the rental unit was cleaned and ready for this tenant's occupancy and if it was not cleaned or if there were damages the tenant did not complain.

With respect to the keys, agent for the tenant testified that the tenant did not return the them because she did not know how to. The agent testified that the tenant tried numerous times to call the landlord but there was no answer. The agent testified that the tenant did not leave the keys in the rental unit "probably because she didn't know she could". The agent for the tenant testified that this was the tenant's first tenancy.

The landlord testified that he has an office that is open Monday to Friday 9 to 5 pm. The landlord also testified that there are contact phone numbers where he can be reached and these phone numbers are on the rental application and the Tenancy Agreement. In the alternative the landlord testified that the tenant could have just simply left the keys on the counter.

The landlord testified that because the tenant did not cooperate with the move-out inspection she has forfeited her security deposit.

ANALYSIS AND FINDINGS

The landlord has submitted evidence of cleaning, painting and lock replacement. The tenant's agent gave little evidence as to steps take to clean and repair the rental unit at the end of her tenancy. The tenant's agent states that the rental unit was not clean and/or was damaged at the start of this tenancy yet the agent for the tenant does not know if the tenant complained to the landlord about these problems at the state of the tenancy. The landlord's evidence is that she did not complain, given the lack of evidence from the tenant, I will accept the landlord's evidence and find that the tenant did not adequately clean the rental unit at the end of her tenancy. While the tenant's agent argued that the rental unit was unclean at the start of the tenancy this does not alleviate this tenant from cleaning at the end of her own tenancy.

I am also satisfied based on both the landlord and the tenant's agent's testimony that the tenant did not return the keys. I will therefore allow the landlord's claims for cleaning and re-keying locks. However, with respect to the claim for cleaning, I find the hours expended to be excessive and I will reduce the cleaning costs to \$250.00. I will allow the full \$100.00 for re-keying the locks.

The landlord testified that the condition inspection report was not prepared properly at the start of this tenancy. If it was, we might now be able to more accurately determine the condition of the rental unit at the start of this tenancy and whether this tenant caused the damage that required painting to be done. Without such documentation I am not satisfied that this tenant caused the damage that required repainting of walls and I will dismiss the landlord's claim for painting costs.

Not having prepared an adequate move-in condition inspection the landlord has lost his ability to claim against the security deposit. However, having made a monetary award in favour of the landlord, I will use the offsetting provisions of the legislation to allow him to keep the deposit in satisfaction of the awards made herein. Having insufficient evidence of the opportunities offered to the tenant for inspection at the end of this tenancy I will not find that she has forfeited her security deposit.

Having found the landlord mostly successful in his applications, I find that he is entitled to recover the filing fees paid for this application.

Calculation of Monetary Award

Cleaning and re-keying	\$350.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest from May 1, 2008 to the date of this Order	-631.08
Balance Of Security Deposit to be returned to Tenant	(\$231.08)

Conclusion

The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible.

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.