



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MND, MNDC, MNSD, & FF

Introduction

This hearing dealt with cross applications by the parties. The tenant filed her application on February 27, 2009, one day prior to the end date of the statute of limitations. As a result, the landlord's cross application was accepted as it was filed in response to the tenant's application.

The tenant filed seeking a monetary claim for the return of her security deposit and for reimbursement of costs associated with work completed on the landlord's property. The tenant filed her application one day before the two year limitation period ended pursuant to section 60 of the *Act*. The landlord filed a cross application seeking a monetary claim for damage caused to the rental unit by the tenant and a request to retain the tenant's security deposit plus interest in partial satisfaction of her claim. The landlord's application is accepted after the two year limitation period pursuant to section 60(3) of the *Act*.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues to be Determined

Is the tenant entitled to any compensation related to the agreement to refinish the hardwood floors in the rental unit? Is the landlord entitled to any damages arising out of the tenant's failure to meet this agreement? Is the landlord entitled to retain the tenant's security deposit plus interest?

Background and Evidence

This tenancy began on November 1, 2006 for the monthly rent of \$1,200.00 and a security deposit of \$600.00 which was paid on October 8, 2006. The tenancy ended as of February 28, 2007, although the tenant vacated as of February 19, 2007.

The tenant stated that she provided the landlord with notice to vacate and receipts for the materials and tool rentals to work on the flooring of the rental unit on January 31, 2007. The landlord denied this and stated that she had no knowledge that the tenant was vacating until she was notified by a neighbouring occupant that the tenant was

vacating. The landlord states that the tenant left the rental unit in an unclean and damaged condition and did not provide any contact information, such as a forwarding address.

The rental unit was rented with carpets; however, the tenant wanted to expose the hardwood flooring underneath. The parties entered into a verbal agreement that the tenants could remove the carpeting and refinish the hardwood flooring. The landlord would pay for materials. The landlord stated that she was concerned throughout the tenancy about the tenant's ability to complete the major renovation. The tenant contended during the hearing that she was never overwhelmed by the project but other circumstances led her to leave the rental unit.

The tenant submitted that in early January 2007 she was informed by another occupant that there had been a murder in the rental unit. The tenant submitted that a large stain in the flooring was a result of that murder and she was distraught that the landlord had not disclosed this information when she initially viewed the rental unit. As indicated previously, the tenant stated that she could no longer live in the rental unit, so she gave notice to vacate and gave the landlord copies of the receipts for the materials and tool rentals up to January 31, 2007.

The landlord is seeking damage related to loss of rent for March 2007 as the tenant did not provide any notice to vacate, \$350.00 in damage to replace a door and repair a light fixture, \$145.00 to remove debris left behind by the tenant and \$1,150.00 in repair costs to finish the renovation to the hardwood flooring.

The tenant submits that she spent \$424.56 on materials and \$545.23 on tool rentals for the work she completed on the floors. The tenant also seeks the return of her security deposit plus interest.

Analysis and Findings

I have carefully considered the documentary and oral evidence submitted by each party. I find on the evidence before me and in considering the context of the whole situation that the landlord's evidence is more reliable than the tenant's evidence. I do not accept the tenant's version that she gave the landlord notice to vacate. I find it is more likely that the tenant chose to abandon the rental unit in February 2007 after discovering that a murder occurred in the rental unit. This supports the conclusion that the tenant did not provide a forwarding address to the landlord at that time. I also accept that if the landlord had any knowledge that the tenant was vacating or any knowledge of the tenant's whereabouts prior to receiving the tenant's application for dispute resolution, the landlord would have pursued the tenant for the damages as claimed.

However, I accept the evidence of both parties that there was an agreement that the tenant could refinish the hardwood flooring in the rental unit and I accept that the landlord agreed to reimburse the tenant for the cost of materials. I also accept that the cost of renting necessary tools would be a reasonable expense that the landlord would be expected to reimburse the tenant for.

As a result I accept the tenant's claim for the expenses totalling \$969.79 in reimbursement of the work completed to the flooring in the rental unit. I deny the tenant's request to claim back her security deposit plus interest. Pursuant to section 39 the tenant's right to the security deposit was extinguished as she failed to provide the landlord with a forwarding address in writing within one year of the tenancy ending. I deny the tenant's request to recover the filling fee paid for this application from the landlord as the tenant's application was only partially successful and because the tenant delayed the pursuit of this application unnecessarily.

I accept the landlord's application in full for the sum of \$2,845.00. I accept the landlord's evidence that the tenant failed to provide notice to end the tenancy as required by the *Act* and that the tenant is liable for the landlord's loss of rent for March 2007 for the sum of \$1,200.00. I also accept the landlord's evidence that the flooring was not completed, as the tenant agreed to do, and it cost the sum of \$1,150.00 to complete the project. I also accept the landlord's further claims for removal of debris and replacement of the door and repair of the light fixture for the sum of \$495.00. In addition I find it reasonable that the tenant reimburse the landlord the \$50.00 filling fee paid for this application.

Conclusion

The tenant's application was granted in part and a monetary claim of \$969.79 was established. This sum was deducted from the monetary claim established by the landlord.

I Order that the landlord's monetary claim for the sum of \$2,895.00 should be reduced by the amount owed to the tenant, or by \$969.79. There is a remaining balance owed to the landlord for the sum of **\$1,925.21**. I grant the landlord a monetary Order for this sum. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 16, 2009.

Dispute Resolution Officer