



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for unpaid rent, for damages to the rental unit and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

Issues(s) to be Decided

1. Is there unpaid rent and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so, how much?
3. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on July 1, 2008 and was to expire on June 30, 2009 however, it ended on February 17, 2009 when the Tenant moved out. Rent was \$2,200.00 per month payable on the first day of each month. The Tenant paid a security deposit of \$1,500.00 at the beginning of the tenancy.

The Tenant paid \$1,500.00 for February, 2009 rent. The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on February 10, 2009 when the Tenant did not pay the balance owing. The Parties did a move out inspection on February 17, 2009.

The Landlord said that the Tenant did not clean the floor or stove top and that he incurred an expense of \$50.00 to do this cleaning. The Landlord also said that a laundry room door and bathroom sink had to be repaired a cost of \$130.00. Tenant does not dispute these expenses. The Landlord claimed that all of the walls in the rental unit had damages that had to be repaired and repainted. In support, the Landlord provided a copy of the condition inspection report as well as photographs showing various scratches, holes or dents and screw in the walls. The Landlord claimed that it cost \$735.00 to repair this damage and repaint the walls in rental unit.

The Tenant argued that the blown out light bulbs and marks on the walls were regular wear and tear for which he should not be responsible. The Tenant said that when he

received the Landlord's estimate of the damages on February 18, 2009, he asked the Landlord to return an access key so that he could get an estimate but the Landlord refused. The Landlord claimed that the Tenant never said he wanted to get estimates done but rather advised the Landlord that he was only willing to pay a substantially lesser amount.

Analysis

As the Parties are agreed that there is outstanding rent of \$700.00 for February, 2009, that the Tenant is responsible for the cost of cleaning of \$50.00 and for repairing a door and sink of \$130.00, I award the Landlord those amounts.

Section 32 of the Act says that a Tenant is responsible for damages that are caused by his acts or neglect but is not responsible for reasonable wear and tear. RTB Guideline #1 (Responsibility for Residential Premises) defines reasonable wear and tear as "the natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion. RTB Guideline #1 also says that a tenant must pay for repairing walls where screws or nails have been used and have left wall damage. A tenant is also responsible for all deliberate or negligent damage to the walls and for replacing light bulbs during the tenancy. However, a Landlord is responsible for painting the interior of the rental unit at reasonable intervals.

Having regard to the photographic evidence provided by both of the Parties, I find that there is insufficient evidence that repairs or painting was necessary in the den/storage area or bedrooms. I also find that the damages to the balance of the rental unit do not constitute reasonable wear and tear and the Tenant is responsible for the cost of repairing and painting the walls (and column) in those rooms. Consequently, I find that the Tenant is responsible for one-half of the painting expense or \$367.50. As the Landlord has been successful in this matter, I also find that she is entitled to recover her \$50.00 filing fee for this proceeding.

In summary, I find that the Landlord is entitled to the following amounts:

Unpaid rent:	\$700.00
Repairs:	\$130.00
Cleaning:	\$50.00
Painting:	\$367.50
Bulbs:	\$6.91
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,304.41

Residential Tenancy Branch
Ministry of Housing and Social Development

Section 19 of the Act prohibits a Landlord from requiring or accepting a security deposit that is greater than $\frac{1}{2}$ of the monthly rent. If a Landlord accepts more than $\frac{1}{2}$ of the monthly rent as a security deposit, the Tenant may recover the overpayment. In this case, I find that the Landlord is in contravention of the Act by requiring the Tenant to provide a security deposit of \$1,500.00 and must return \$400.00 (plus accrued interest) to the Tenant which represents the overpayment. Consequently, the Landlord is only entitled to offset her damage award from \$1,100.00.

Pursuant to s. 38(4) of the Act, I order the Landlord to keep \$1,100.00 of the Tenant's security deposit in partial payment of the damage award. The Landlord will receive a monetary order of \$204.41 being the balance left owing. As stated above, the Landlord must return \$411.31 to the Tenant which represents the security deposit overpayment plus accrued interest.

Conclusion

A monetary order in the amount of **\$411.31** has been issued to the Tenant and a copy of it must be served on the Landlord. A monetary order in the amount of **\$204.41** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by either party, the Order(s) may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: June 01, 2009.

Dispute Resolution Officer