



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, SS, FF, O

Introduction

This hearing was scheduled for 1:30 p.m. on this date to hear cross applications. The landlord made an application on July 14, 2009 for a Monetary Order for unpaid rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. The tenant made an application on October 21, 2009 for a Monetary Order for return of the security deposit and damage or loss under the Act, regulation or tenancy agreement, recovery of the filing fee, substituted service, and other issues.

As a preliminary issue, the tenant requested the hearing be held face-to-face. The reasons given by the tenant included the ability to adequately demonstrate her claims for damage or loss against the landlord and effective cross examination of the other party and witnesses. As the landlord's claims pertained to unpaid rent and painting charges, and the landlord's evidence consisted primarily of photographs, invoices and the tenancy agreement, I declined to grant an adjournment for a face-to-face hearing for the landlord's application. However, in considering the tenant's request for adjournment, I have considered that the landlord was served with the tenants' application and evidence only four clear business days before this hearing, and I granted the request for an adjournment with respect to the tenants' claims against the landlord only. Accordingly, the hearing proceeded with respect to the landlord's claims for unpaid rent, damage to the rental unit and retention of the security deposit. Notices of Adjourned Hearing have been provided to the parties, under separate cover, in order to hear the tenants' application for damages or loss against the landlord in person at the Burnaby Residential Tenancy Office.

With respect to the tenants' request for substituted service, the tenant explained that the person the tenant wish to serve in a different manner was in attendance at the hearing so the need for substituted service was no longer necessary.

Other preliminary issues included conduct at the hearing. The dispute resolution process was explained to the parties and both parties were cautioned to not speak out of turn or interrupt the other party while giving testimony. The tenant had to be cautioned several times and in fact was muted during the hearing three times. The tenant confirmed that she was able to hear testimony while she was muted and was provided the opportunity to respond to what she heard during the time she was muted.

The tenant also stated that she was tape recording the dispute resolution hearing to which the tenant was instructed to cease recording the hearing as it was explained to the tenant that private recordings are not permitted under the Rules of Procedure. As information for the tenant, Rule 9.1 of the Rules of Procedure prohibits private recordings of dispute resolution proceedings.

Issues(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent?
2. Is the landlord entitled to compensation for damage to the rental unit, and if so, the amount?
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony from both parties, I make the following findings. The tenancy commenced April 1, 1990 and the tenants vacated the rental unit on July 2, 2009. A \$295.00 security deposit was paid on March 14, 1990. At the end of the tenancy, the monthly rent was \$910.00 due on the 1st day of every month. On June 30, 2009 the tenants faxed a Notice to End Tenancy to the landlord with an effective date of July 2, 2009. On July 2, 2009 the landlord and tenant performed a move-out inspection and both parties signed the inspection report.

With this application, the landlord is seeking compensation for unpaid rent for July 2009, painting costs, replacement of the blind tracks and replacement of the light switches and light switch plates. The painting costs were less than estimated at the time the application was made and the landlord reduced the claim to reflect the actual cost and subtracted the cost normally associated to painting a unit that has normal wear and tear. The landlord explained that the tenants painted the unit dark colours and painted underneath cabinets, the blind tracks and light switches. The amount sought by the landlord is as follows:

Unpaid rent – July 2009	\$ 910.00
Additional painting costs	1,076.25
Replacement of blind tracks	313.60
Replacement of light switches and plates	<u>100.00</u>
Total claim	\$ 2,399.85

Upon enquiry, the landlord confirmed that the rental unit had not been painted by the landlord during the 19 year tenancy and that the blind tracks were there before the tenancy began.

The tenant was of the position that the tenants had the right to end the tenancy without a full month of notice because the landlord had breached the tenancy agreement or Act by having cell phone and Internet towers installed on the roof of the residential property. The tenant claimed that this caused her and the co-tenant to suffer health issues; however, the tenant confirmed that she had not notified the landlord of any breach in writing before giving the notice to end tenancy.

The tenant testified that in 1998 she obtained the verbal consent of the property manager to paint the unit as the landlord had not painted the unit since the tenancy began 8 years earlier. The tenant claimed that the former property manager was shown the colours the tenant intended to use and was aware of her plans with respect to painting the unit. The tenant pointed out that the landlords had not painted the walls or changed carpets during the tenancy despite requirements for the landlord to paint in reasonable intervals but that the tenants continued to reside in the unit because they liked the area in which the rental unit was located.

The landlord responded by saying that the tenancy agreement requires tenants to obtain prior written consent to paint a unit under clause 19. The full tenancy agreement was not provided as evidence for the hearing; however, the landlord was permitted to read from clause 19 of the tenancy agreement. The landlord has looked in the tenancy documents and did not locate written permission from the property manager and spoke to the former property managers who all denied they gave permission to the tenants to paint the rental unit.

Analysis

Unpaid rent

Where a tenant seeks to end a month to month tenancy, the tenant must provide at least one month of written notice. In this case the tenant provided written notice on June 30, 2009; therefore, the earliest effective date of the notice was July 31, 2009 under section 45(1) of the Act. In the tenant's submissions during the hearing, the tenant referred to section 45(3) of the Act which permits a tenant to end the tenancy on an effective date that is after the date the landlord receives the Notice if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the

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breach to the landlord. As the tenant confirmed that the tenant did not provide the landlord with written notice of a material breach of the tenancy agreement I find that section 45(3) does not apply in this case. Therefore, I find the effective date could have been no earlier than July 31, 2009 under section 45(1) of the Act and the tenant was obligated to pay rent for July 2009. Since I heard the landlord was unable to re-rent the unit for July 2009, I award unpaid rent of \$910.00 to the landlord.

I reject the tenant's position that the tenant was not obligated to pay rent on the basis the landlord had breached the Act, regulations or tenancy agreement as section 26 of the Act requires the tenant to pay rent when due under the tenancy agreement whether or not the landlord complies with the Act, regulation or tenancy agreement. For clarity, in referring to section 26 of the Act, I am not making a finding that the landlord violated the Act, regulation or tenancy agreement; rather, even if the tenant had established a violation on part of the landlord, the violation would not have permitted the tenant to withhold rent for July 2009.

Damages to the rental unit

Awards for damages are intended to be restorative, meaning where a fixture or other item depreciates through normal aging and usage that normal depreciation must be taken into account in determining an award for damages.

Residential Tenancy Policy Guideline 1 provides that a landlord is responsible for painting the interior of the rental unit at reasonable intervals. Residential Tenancy Policy Guideline 37 provides a table of normal useful life of fixtures and work done to a rental unit and I use that table as a reference to estimate what is ordinarily considered a reasonable interval for interior paint. The guideline provides that interior painting has a normal useful life of four years. Accordingly, I find it reasonable that the landlord should have painted the unit at least once or twice by the time the tenants painted the unit in the eighth year of their tenancy and that it is likely the tenants sought permission to do so themselves.

Since the landlords never painted the unit during this lengthy tenancy, I find the landlord saved the cost of at least four paint jobs during the length of this tenancy. The landlord's evidence shows that a rental unit typically costs \$575.00 plus tax to repaint under normal circumstances. Although I find the tenants' paint job went well beyond typical painting techniques, I find that the landlord's failure to repaint the unit during the 19 years of tenancy saved the landlord an amount equivalent to the extra painting costs associated with covering up the tenants' painting efforts. Therefore, I deny the landlord's claims for additional painting costs.



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Policy Guideline 37 also provides that drapes and blinds have a normal useful life of 10 years. As I heard the blinds in the unit were well beyond 10 years of age, I find the depreciated value of the blinds to be nil. I also find the light switches and plates to have a depreciated value of nil taking into account a normal useful life of 15 years according to the policy guideline. Therefore, I do not make an award to the landlord for the damaged blind tracks and light switches as these items were at the end of their useful life regardless of the damage caused by the tenants' painting.

Summary

The landlord has been awarded unpaid rent for the month of July 2009 in the amount of \$910.00. The landlord's claim for damages to the rental unit have been dismissed without leave to reapply. The landlord is awarded one-half of the filing fee for a total award of \$935.00.

The landlord is authorized to withhold the tenants' security deposit and accrued interest in partial satisfaction of the amount awarded to the landlord. I calculate the interest on the tenants' security deposit to be \$148.66.

Conclusion

The landlord has been partially successful in this application and has established an entitlement to \$935.00. The landlord is authorized to retain the tenants' security deposit and accrued interest in partial satisfaction of the amount awarded to the landlord and has been provided with a Monetary Order for the balance of **\$491.34**. The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce 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: November 27, 2009.

Dispute Resolution Officer