



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for unpaid rent or utilities; for an order permitting the landlords to serve the tenant in a different way than required by the *Act*; and to recover the filing fee from the tenant for the cost of this application.

Following a hearing on July 21, 2010, the landlord's application for a monetary order for unpaid rent or utilities, and for an order recovering the filing fee from the tenant for the cost of this application, I ordered that the tenant pay to the landlord the sum of \$1,350.00. I further ordered that the service effected by the landlords was sufficient service pursuant to Section 71 (2) (b) and (c) of the *Residential Tenancy Act*. The balance of the landlords' application was adjourned from time to time and was the focus of the hearing today.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 27, 2010 the tenant did not attend the conference call hearing.

An agent for the landlord attended and provided verbal affirmed testimony. All evidence and information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on February 28, 2010, and the tenant moved out of the rental unit on March 12, 2010 after his rent cheque had been returned by the bank marked "N.S.F."

The landlords' agent testified that the rental unit was a brand new condominium when the tenant moved in. The tenant moved furniture in and out of the rental unit for his business, and extensive damage was done to the unit and the common areas of the strata complex for which the landlords are held responsible.

No move-in condition inspection report was completed by the parties however the landlord provided a copy of the tenancy agreement in advance of the hearing which states: "condo is brand new and is in good condition." That statement has been initialled by the landlord and the tenant.

A witness for the landlord, a realtor, testified that the property had been listed for sale, but didn't sell, and the owners decided to rent the unit. He further testified that the unit was never occupied by anyone before the tenant moved in. The witness saw damage after the tenant moved out, such as a chipped door frame at the entry, wall damage, scratches on the hardwood floors and the fridge and freezer doors were both dented. He stated that the bigger gouges on the walls are in the entry and hallway. The landlord provided photographs of the rental unit to support that evidence.

The landlords also provided a copy of a cheque issued to a person for painting the damaged walls in the amount of \$130.00. They further provided an estimate for the cost of replacing the hardwood floor at \$1,350.00 as well as \$383.94 to replace the

fridge door, \$313.74 for the cost of the freezer door, and 1 or 2 hours for installation. That estimate also includes an additional \$1,080.00 for painting the entire rental unit. The landlord testified that the fridge has been replaced and provided a Sales Order in the amount of \$4,619.99.

The landlord's agent also testified that the landlord was held responsible for painting the entrance door and hallway for \$236.25 including GST for the common areas to the strata complex. Further, the tenant did not clean the unit before departing, and the landlord is claiming \$100.00 for the tenant's failure to leave the unit reasonably clean.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy a four-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of the damage or loss;
4. The efforts the claiming party made to mitigate, or reduce the damage or loss suffered.

Further, with respect to the refrigeration unit, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. I accept the evidence of the landlord's agent that the fridge was not damaged when the tenant moved in, and the tenant made no indication of any damage on the tenancy agreement, however the fridge is still operable. For that reason, I decline to award the full price of the unit to the landlord, and rely on the estimate provided for replacement of the two doors, in the total amount of \$742.68.

I further find that the tenant is responsible for painting in the unit, even though the tenant only resided in the rental unit for 2 weeks. However, the landlord has failed to satisfy element 3 with respect to painting, with the exception of \$130.00 for which the

landlord provided a copy of the cheque issued for that service, and \$236.25 for the common areas. I further accept the evidence of the landlord that the tenant did not clean the unit or leave it reasonably clean except for normal wear and tear.

Costs for preparation for the hearing and serving documentation by registered mail are not recoverable.

Conclusion

For the reasons set out above, I find that the landlord has established a claim for \$1,208.93 in damages. I grant the landlord an order under section 67 for the balance due of \$1,208.93. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: November 19, 2010.

Dispute Resolution Officer