



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damage to the unit, site or property, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on August 19, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on September 1, 2006 as a 4 year fixed term tenancy with an expiry date of August 31, 2010. Rent was \$4,160.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$2,000.00 on September 1, 2006. The Tenants moved out on July 31, 2010, one month before the end of the tenancy with the agreement of the Landlord. The Tenant gave the Landlord a letter with a forwarding address, which was a lawyer in Vancouver as the Tenant was moving back to Switzerland. The Landlord and Tenant agreed that there was no move in condition inspection report or a move out inspection report completed for this tenancy.

The Landlord said he is seeking damages to the rental unit in the amount of \$8,978.26. These damages include the \$3,360.00 to repair and paint the walls of the unit, \$4,417.28 to replace the hardwood flooring in the living room, \$915.98 to replace the carpet in the family room, \$15.00 to replace the mail box, \$200.00 to repair damage to the eaves of the roof over the bar-b que area and \$70.00 for the Landlord's labour to clean the yard. The Landlord said the damages are not wear and tear of a normal tenancy and he would like to be compensated so that he can complete the repairs to the

unit. The Landlord submitted pictures into evidence to show the extent of the damage. The Landlord said the pictures show the wall damage is holes in the walls that were made to hang pictures, a flat screen TV and shelves. He said the some holes were a similar size to his little finger and there may be over 50 of the holes in the unit. Before he paint he had to repair all the walls. He continued to say the hardwood floors have deep scratches caused by the movement of chairs on the floor. The Landlord said the carpet needed to be replaced because of wear marks in the traffic areas and some stain marks in other areas. The pictures were taken July 31, 2010, at the end of the tenancy with both the Tenant and the Landlord present at the rental unit.

The Landlord continued to say that he received a number of quotes on the repairs to the unit in order to try to minimize the costs and the estimates he submitted were the ones he thought were the best to do the work.

The Tenant testified that he believes that all the damages that the Landlord is claiming are normal wear and tear during a 4 year tenancy. He said that the holes in the walls were put in with a plastic sleeves to support the hangers or screws as the walls are a drywall material and he believed that was the correct way to hang pictures, his TV and the shelving unit. The Tenant and the Landlord both said there was no clause in the tenancy agreement about putting holes in the walls. The Tenant continued to say that the scratches on the floor are from the chairs but it is normal wear and tear. He said they hired a professional carpet cleaner when they moved out but the stains in the traffic areas did not come out completely. The other stain the Tenant said was from his child dropping silly putty on the carpet. Again he said he believes these are normal wear and tear of a 4 year tenancy.

The Tenant said he does not believe he caused any damage to the unit, but he offered the Landlord \$500.00 as full settlement.

The Landlord said he is now living in the house, he has painted it, but he has not redone the floors or replaced the carpet as of yet. Therefore the painting is an actual cost and the other claims are from quotes to do the work.

Analysis

Section 24 (2) of the Act says the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Landlord did not complete a move in or move out inspection report therefore; I find that the Landlord's claim against the security deposit is dismissed without leave to reapply. I order the Landlord to return the Tenant's security deposit of \$2,000.00 with accrued interest as prescribed by the Act from September 1, 2006.

Section 47 of the Act says a Landlord's notice for cause says in section 47 (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

There is much contradictory testimony and evidence regarding the damage to the rental unit. The burden of proof is on the Landlord to prove that the damage was caused solely by the Tenant. Tenant provided plausible alternatives that part of the damage may have partially been there on move in or it was normal wear and tear on the unit over a 4 year tenancy. Without a move in inspection report or solid proof as to the move in condition of the unit the Landlord has not met the burden of prove to support the damage was caused by the Tenant. Consequently I find for the Tenant and dismiss the Landlord's application for a Monetary Order for damages to the unit, site or property and to recover the filing fee for this proceeding.



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Conclusion

The Landlord's application is dismissed without leave to reapply.

The Landlord is ordered to return the Tenant's security deposit of \$2,000 plus accrued interest as prescribed by the Act, forthwith.

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*.
