



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Tenant submitted a package of evidence to the Residential Tenancy Branch, which was available to me and to the Landlord at the time of the hearing.

The Landlord stated that he submitted a package of evidence to the Residential Tenancy Branch. The evidence package was available to the Tenant at the time of the hearing however it was not available to me at the time of the hearing.

The Landlord requested an adjournment of the hearing due to the fact the evidence package was not before me. The request for an adjournment was denied. The parties were advised that the hearing would proceed; that the Landlord would be given the opportunity to describe any of the documents included in the evidence package that was allegedly submitted to the Residential Tenancy Branch; that I would consider that evidence providing the Tenant did not dispute the Landlord's description of relevant documents; that the Landlord could submit a duplicate copy of the evidence package that had been served on the Tenant to the Residential Tenancy Branch; and that I would render a decision after receiving the duplicate copy of the evidence package.

I have not been able to locate the evidence package that had been allegedly submitted by the Landlord, however I did receive a duplicate copy from the Landlord and I reviewed that evidence prior to rendering a decision in this matter.

All evidence submitted by each party was reviewed prior to making a determination in this matter, although that evidence may not be specifically referenced in this decision. For example, I have made no mention of the Tenant's position regarding when they

were served with a copy of the Condition Inspection Report or whether the Landlord is entitled to retain the pet damage deposit for damage not caused by a pet, as those issues were not something I considered when rendering this decision.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for painting the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to sections 38, 67, and 72(1) of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on January 01, 2009; that it ended on July 31, 2010; that the Tenant was required to pay monthly rent of \$950.00; that rent was due on the first day of each month; that the Tenant paid a pet damage deposit of \$475.00 on January 01, 2009; and that the Tenant paid a security deposit of \$475.00 on January 01, 2009. The parties agree that this tenancy began as a fixed term tenancy agreement and continued after the end of the initial term of the tenancy.

The Landlord and the Tenant agree that a Condition Inspection Report was completed prior to the beginning of the tenancy, on December 30, 2008. The Landlord and the Tenant agree that a Condition Inspection Report was completed at the end of the tenancy, on July 31, 2010. Both parties had a copy of the Condition Inspection Report available to them at the time of the hearing. The Tenant agrees that the Condition Inspection Report accurately reflects the condition of the rental unit.

The Landlord and the Tenant agree that the parties had neither a written nor a verbal agreement regarding smoking in the rental unit and that the Landlord never asked the Tenant to stop smoking in the rental unit at any point during this tenancy. The Tenant agrees that they smoked in the rental unit during the tenancy.

The Landlord contends that the rental unit smelled of smoke and that it needed to be repainted to eliminate the smell of smoke. He stated that the ceiling and ninety percent of the walls in the rental unit were repainted.

The Landlord submitted documentation from a restoration company that viewed the rental unit, in which the expert noted that there was a heavy odour of nicotine in the rental unit. The expert recommended that the textured ceiling be sealed with oil paint, which the expert believed would remedy the problem.

The Landlord submitted documentation from a painting company which included a cost estimate for painting the rental unit. On the estimate there is a notation that the purpose of painting is to eliminate the heavy smoke odour throughout.

The Landlord submitted a letter from a member of the Strata Corporation, in which the author declared that he was in the rental unit after this tenancy ended; that he noted a strong, offensive smell of cigarette smoke, and that he noted that the ceiling was discoloured.

The Landlord is claiming compensation, in the amount of \$262.90, for painting supplies used to repaint the unit. The Landlord provided the Tenant with a receipt for this amount, although the receipt was not before me at the time of the hearing. The Tenant does not dispute that the Landlord paid this amount for painting supplies.

The Landlord is claiming compensation, in the amount of \$425.00, for the cost of travelling to and from his home in Alberta, which was necessary because the Landlords painted the rental unit themselves. The Landlord provided the Tenant with gas and ferry receipts, in the amount of \$212.76, for the cost of travelling one way, although the receipts were not before me at the time of the hearing.

The Tenant does not dispute that the Landlord paid this amount to travel one way between his home and the rental unit. The Tenant argues that the expense was not necessary, however, as they have an agent representing them and the agent could have made any necessary repairs.

The Landlord is not claiming compensation for the time the Landlords spent painting the rental unit.

The Tenant agreed that the ceiling in the rental unit had yellowed and required painting. She stated that they washed the walls three times; that because the walls had been washed they were likely not the source of the smell of smoke; that they had attempted to wash the ceiling but, because of the nature of the ceiling material, the ceiling could not be washed; and that the Landlord is exaggerating the extent of the smell in the rental unit.

The Tenant contends that the discoloration on the ceiling of the rental unit should be considered normal wear and tear in a rental unit which does not restrict smoking. The Tenant contends that since they were never asked to not smoke in the rental unit any claims for compensation as a result of smoking in the rental unit are unreasonable. The Tenant contends that the Landlord visited during this tenancy and knew, or should have known, that they were smoking in the rental unit however they were never asked to cease smoking inside the unit.

The Tenant contends that an agent for the Landlord viewed the rental unit on July 24, 2010 which is the first time the Tenant became aware that the Landlord did not want them to smoke in the rental unit. The Tenant stated that they would not have smoked inside if the Landlord had expressed concerns about smoking in the rental unit.

The Landlord argued that discoloration and odours that relate to smoking in the rental unit should not be considered reasonable wear and tear.

Analysis

The undisputed evidence indicates that the Tenants were not asked to refrain from smoking at any point during this tenancy. Section 13(1) of the *Act* requires landlords to prepare a written tenancy agreement for every tenancy that begins after January 01, 2004. Ideally, this is where the parties would agree on terms of this tenancy, including whether smoking in the rental unit was prohibited.

Many Landlords explicitly prohibit smoking in a rental unit primarily to avoid the impact smoking has on their property. In the absence of a specific agreement regarding smoking, I find that it was reasonable for the Tenants to believe that they were permitted to smoke inside the rental unit.

The undisputed evidence is that the ceiling of the rental unit had yellowed due to the fact the Tenant permitted smoking in the rental unit. On the basis of the evidence submitted by the Landlord, I find that the rental unit smelled of smoke. In reaching this conclusion I was heavily influenced by the evidence from the two tradesmen, who both recorded that the rental unit had a heavy odor of smoke.

Section 37(2)(a) of the *Act* stipulates that at the end of the tenancy a tenant must leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. In my view a yellowed ceiling and the smell of smoke constitutes reasonable wear and tear in a rental unit where smoking is not prohibited. As Tenants are not obligated to repair damage that is considered reasonable wear and tear, I dismiss the Landlord's claim for compensation for painting the rental unit.

Conclusion

As the Landlord has not established that they are entitled to financial compensation, I dismiss the Landlord's application to retain any portion of the security deposit or pet damage deposit. I therefore find that the Landlord must return the deposit, in the amount of \$950.00. Based on these determinations I grant the Tenant a monetary Order for the amount \$950.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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