



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MND, MNSD, MNDC

Introduction

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

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on August 16, 2010. Based on the evidence of the Landlord's agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord's agent and the Tenants in attendance.

Issues(s) to be Decided

1. Was there damage to the unit, site or property and if so is the Landlord entitled to compensation for the damages or loss and if so how much?
2. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on February 14, 2010 as a fixed term tenancy with an expiry date of July 31, 2010. Rent was \$1,450.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$725.00 during the first part of February, 2010.

The Landlord's agent said a move in condition inspection report was completed on move in and a move out inspection report was completed in the Tenant's absence as the Tenant had moved out prior to July 31, 2010. The Landlord's agent said that she was not completely sure of how the discussions happened between the Tenants and the previous agent as he is no longer working for the Landlord's agent's company.

The Landlord's agent said her application for dispute resolution is to recover the costs of cleaning the unit of \$200.00, for steam cleaning the carpets for \$100.00, plus HST of \$36.00. As well she said there were two rooms that were painted by the Tenants without written permission. The Landlord's agent said there is a painting clause in the

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tenancy agreement and the Tenant's understood they should not have painted without written permission. The Landlord's agent said the owner got two quotes to paint the rooms and he has submitted the lesser of the two in the amount of \$1,200.00. The Landlord's agent said she is familiar with the costs to repaint units and this quote appears to be in line with other quotes that she has seen. The Landlord's agent said her claim is for the cleaning costs of \$336.00, the painting estimate in the amount of \$1,200.00 and the recover the filing fee for this proceeding of \$50.00. Her total claim is \$1,586.00.

The Tenants said they agree with the Landlord's claim for the cleaning costs in the amount of \$336.00. Both the Tenants said that they tried to contact the previous agent for the company, to make arrangements to do the painting. They said they understood it was their responsibility to paint the rooms they had painted during the tenancy, but the previous agent said he was painting no matter what they did. The Tenants said they did not paint because they could not make an agreement with the previous agent for the Landlord. The Tenants said the painting quote for the unit is too high at \$1,200.00. The Tenants' said they had looked into getting a painting quote, but they did not get one as they believed the previous agent was going to use the Landlord's quotes in any case. The Tenants' did not indicate an amount that they believed the painting should cost.

The Landlord's agent said that she was holding the Tenants' security deposit in trust until a decision is made on how it is to be used.

Analysis

Section 37(2) (a) of the Act says a tenant must leave the rental reasonable clean, and undamaged except for reasonable wear and tear.

As both the Landlord and the Tenants agree that the rental unit needed to be cleaned after the Tenants moved out I find in favour of the Landlord's claim for cleaning costs of \$336.00.

As well, both parties agree that the rooms that were painted without written permission, constitutes a breach on the tenancy agreement. I find the painting of the bedroom and living area is a breach of the tenancy agreement and has resulted there is a loss to the Landlord, which is the cost to paint the rooms back to the original color. There was contradictory evidence with regard to the cost of painting the rooms. The Landlord presented two quotes one for \$1,600.00 and one for \$1,200.00. The Landlord's agent said she believed the \$1,200.00 quote was in line with other painting jobs that she has seen for rental units that were similar to this unit. The Tenants said they did not get an estimate as they didn't think the Landlord's agent would accept it. The Tenants did not

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say how much they thought the cost of painting the rooms should be. The Tenants also said they had a copy of the quotes that the Landlord had received for painting.

I find that the testimony of the Landlord shows that the Landlord tried to mitigate the costs by getting two quotes and the Landlord's agent testified that the quote for \$1,200.00 is what she would expect for painting the rental unit. As well, the Tenants offered no alternative to the estimates, just that the price was too high. I find in favour of the Landlord and Landlord's agent in the amount of \$1,200.00 for painting the rental unit.

Section 38 of the Act says a Landlord must make an application for dispute resolution to claim against a tenant's security deposit when a Landlord has completed a move in condition report and the tenant did not participate in the move out condition report. The Tenant said that she was aware that the Landlord's agent wanted to do a move out condition inspection report and she did not participate as she moved out before July 31, 2010. I find that the Landlord may retain the Tenants' security deposit of \$725.00.

As the Landlord's agent has been successful in this matter, she is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit in partial payment of the damage or loss. The Landlord will receive a monetary order for the balance owing as following:

Cleaning costs	\$ 336.00
Painting costs	\$1,200.00
Filing Fee	\$ 50.00
Subtotal	<u>\$1,586.00</u>
Less Security deposit	<u>\$ 725.00</u>
Balance Owing	<u>\$ 861.00</u>

Conclusion

A Monetary Order in the amount of \$861.00 has been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.
