



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD

Introduction

This was the hearing of an application by the landlord for a monetary order. The hearing was conducted by conference call. The landlord and the tenant participated in the hearing.

Issues(s) to be Decided

Is the applicant entitled to a monetary order and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The applicant rented the apartment and sublet part of the unit to the respondent pursuant to a rental agreement. The tenancy began October 1, 2009. The monthly rent was \$725.00 and the tenancy was for a fixed term ending April 30, 2010 and thereafter month to month. The tenant paid a security deposit of \$362.50 on September 25, 2009. The agreement specified that rent included heat, hot water, electricity, internet, cable and bottled water.

The landlord and tenant effectively shared the rental unit as room-mates. The applicant testified that the tenant moved out on June 1, 2010. He said that he was not given proper notice. The landlord testified that the tenant painted parts of the rental unit, left nail holes in walls and failed to re-paint the walls where the original colour had been altered.

In the application for dispute resolution the landlord claimed that:

Leased tenant vacated without cleaning and/or painting damaged sections of bedroom & living room. Refused to return keys necessitating locks change. Damage deposit of \$362.50 has been requested by ex tenant. Landlord has grounds and expenses to withhold damage deposit. Also requesting half month's rent as loss of revenue for tenant not giving written notice! (reproduced as written)

The landlord requested payment of the sum of \$725.00. The applicant said the tenant painted some walls a light grey colour which was not the standard colour acceptable to the applicant's landlord. The applicant said that after the tenancy ended the tenant refused to return the keys and entered the unit without permission. He claimed that the tenant assaulted him when she was attempting to enter the rental unit without permission.

The tenant testified that she verbally advised the landlord that he was moving at the end of April, 2010. She referred to an application to rent signed April 28, 2010g and her tenancy agreement signed April 29, 2010 for a tenancy to commence June 1, 2010 as evidence that her plans were made in April and were communicated to the applicant.

The tenant testified that the applicant was involved in the painting decision; it was discussed with him and he had a say in the colours that were chosen.

The tenant agreed that when she re-painted parts of the rental unit at the end of the tenancy to return it to the original colour she left some nail holes in one room because she ran out of paint and could not finish on the day she moved out. She purchased more paint the following day.

The tenant produced copies of e-mails and text messages between herself and the applicant concerning her efforts to arrange a time to return to the rental unit to finish the

painting. The tenant said it was impossible to find a time that was agreeable to the applicant for her to return to finish. The relationship between the landlord and tenant was not amicable. By e-mail dated June 16, 2010 the landlord stated to the tenant as follows:

At this time and from now on only contact me using email

I talked to the building management and they said to drop the key of with them during regaler office hours.

Also drop the paint and painting tools and supplies of with them. I will paint it myself. as for the DD I will give back to you in full once I have the paint, keys and a place to send the money. (reproduced as written)

It was on June 18, 2010 that an altercation between the parties occurred at the rental unit.

On June 18, 2010 the tenant wrote to the landlord. She gave him her forwarding address and requested that her security deposit be returned. The tenant left the key to the rental unit with the building manager on June 18, 2010. She submitted a receipt for the key, signed by the resident manger. She also submitted receipts for supplies purchased to repair and paint the walls in the rental unit.

The landlord sent a letter in response dated June 24, 2010. Among other matters, he said in the letter that: "I feel I should be reimbursed from the damage deposit the amount due to me to repair the premise, for that is what a damage deposit is designed to remedy." The landlord did not submit any receipts or calculations to show the amount he should be reimbursed for the work performed.

The landlord did not provide any evidence to show that he took steps to re-rent the unit, or that it was his intention to do so. I was not given particulars of any new tenancy entered into by the landlord

Analysis and conclusion

It was incumbent upon the tenant to give the landlord one month's written notice of her intention to move out of the rental unit. I accept her testimony that she gave the landlord verbal notice at the end of April. The *Residential Tenancy Act* requires a party who does not comply with the *Act* or tenancy agreement to compensate the other for any damage or loss that results. In this case the landlord has not provided evidence to show that he suffered any damage or loss as a result of the tenant's failure to give him written notice that she was moving out. I deny the landlord's claim for loss of revenue in the amount of a half month's rent in the absence of any proof of loss.

In his June 16, 2010 communication to the tenant the landlord said that he would return her damage deposit in full once he had the paint, keys and a place to send the money. The landlord made no mention of any damage or loss in his communications to the tenant, save for his claim that he should be reimbursed in some amount for repairs. He never stated an amount and he earlier said that he would perform the painting and return the deposit in full.

I find that there was no contractual consideration given to the landlord for his promise to paint and to return the deposit in full and I find that he was entitled to withdraw that commitment after his altercation with the tenant. I make no finding as to who was to blame for the dispute. The landlord has not produced an account or receipts. I accept that he did some work that the tenant had committed to do and I award him the sum of \$100.00 for that work; any other claim by the landlord is dismissed. The landlord was obliged to make this application if he was not prepared to return the tenant's deposit; otherwise he might be liable to pay her double the amount of the deposit and for that reason I find that he is entitled to recover the \$50.00 filing fee

for this application. The total award to the applicant is the sum of \$150.00. I order that he retain the said sum from the deposit that he holds and I grant the tenant a monetary order under section 67 for the balance of her deposit in the amount of \$212.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: December 17, 2010.
