



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. A monetary Order for damage;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

I accept that the tenant was properly served with the landlord's application, evidence and hearing package as sent by registered mail on September 1, 2010.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

Background and Evidence

This evidence is that this tenancy began February 1, 2010 for a fixed term ending November 30, 2010. However, on August 3, 2010 the tenant gave notice by way of email that he intended to vacate the rental unit on August 31, 2010. The landlord agrees that he received the email on August 3, 2010 and testified that he began showing the rental unit around August 22, 2010. The landlord testified that he was able to secure a new tenant for September 1, 2010. However, this tenant over-held in the rental unit until September 3, 2010 and the new tenant was not able to move into the rental unit until September 6, 2010.

The landlord testified that the tenant over-held because he was repainting the rental unit. The landlord testified that the tenant had painted the beige walls blue and, pursuant to Section 20 of the written tenancy agreement made between the parties on January 29, 2010, the tenant agreed that:

20. PAINTING, WALLPAPERING AND DECORATING: shall be done only with the prior written consent by RPM and with authorized colours only.

The landlord testified that the majority of tenants prefer neutral colours and if a tenant is given permission to change the wall colour it would be necessary for him to change the walls back to the original colour if the next tenant coming in did not like the colour this tenant used.

The landlord testified that during the over holding period the tenant attempted to repaint the walls to a neutral beige colour however he did not use a primer or undercoat and the blue colour bled through the beige he applied. The landlord testified that it was necessary to have a professional painter attend the premises to apply a primer and repaint the walls to cover the blue paint thoroughly and the new tenant was delayed in being able to move in and could not move in until September 6, 2010. The landlord claims \$520.00 paid to have the rental unit returned to its original colour.

The landlord testified that the rental unit's draperies were cleaned by the tenant and they shrunk by 6" and therefore had to be replaced. The landlord claims the cost of \$252.00 for replacement draperies.

Finally, the landlord testified that the tenant did not return the rental unit keys. The landlord therefore incurred an expense of \$100.00 to rekey the locks.

The tenant says he had a verbal agreement with "Kath" that he could paint the rental unit walls blue and that he would have to return the walls to their original colour only if the next tenant objected to the blue colour. The tenant testified that he had a witness who made similar inquiries and had the same agreement when she painted her walls.

The tenant says that during his notice period he cooperated fully to allow the landlord to secure a new tenant and it wasn't until August 31, 2010 that he was informed that he would have to return the walls to their original colour. The tenant says that on September 1, 2010 "Kath" left him a voice mail message stating that she had spoke to the next tenant and confirming that he did have to repaint the walls. The tenant says the next tenant was not moving in until the weekend (September 4-5) so he was given the intervening days to perform the painting.

The tenant testified that he had been in touch with the new tenant and that she would have not demanded that the walls be painted back to beige if it was not for the landlord's pressure. To prove this, the tenant submitted email correspondence he says is between himself and the new tenant "Megan". In the emails the new tenant states

that she was asked by the landlord if she wished the walls to be returned to off-white. The new tenant states that the landlord told her that if the walls were left blue it would be her responsibility to bear the expense of repainting the walls at the end of her tenancy if the next tenant did not like the blue walls and strongly advised her to ask them to be painted back to white. In the email “Megan” says she agreed that it was probably a good idea although she actually liked the blue but was afraid if she might have to deal with a “finicky” tenant who might want the walls painted back at the end of her own tenancy.

With respect to the draperies the tenant says “Kath” told him to put the draperies into the wash and he followed those instructions. The tenant says that the draperies looked exactly the same as they did when he moved in and they had not shrunk.

With respect to the draperies, the landlord responded that if the draperies had not shrunk then the walls must have been made higher by 6 inches.

With respect to the keys, the tenant says he did not return the keys because the landlord did not ask for them.

Analysis

The *Residential Tenancy Act* requires that tenancy agreements be in writing. Any changes to a written tenancy agreement must also be in writing. In this case the tenant’s tenancy agreement says he must not repaint the rental unit without the written permission of the landlord. Further, with respect to renovations and changes to the rental unit, Residential Tenancy Act Policy states:

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Contrary to need for tenancy agreements and changes to tenancy agreement to be in writing as set out in the Act and contrary that they be explicitly given in policy, the tenant says he had verbal permission to repaint the rental unit blue from “Kath” which

he says is a representative of the landlord. The tenant did not produce any evidence from "Kath" about this verbal agreement. However, even if he did have verbal permission, the tenant admits that "Kath" also told him that he would have to change the colour back to the original beige if the next tenant wished it.

The landlord has testified that the next tenant wanted the rental unit returned to the neutral shade.

The tenant disputes that the next tenant wanted the wall colour returned to beige and he submits emails he says are from the next tenant named Megan. The tenant testified that these emails prove that Megan was forced by the landlord into insisting that the walls be returned to beige.

Emails can be easily altered and there is no real way to tell where they came from or who wrote them. I am therefore not prepared to accept email print outs as proof of a discussion. However, even if I were to accept these emails they clearly state that while the new tenant liked the blue walls, having been informed that keeping them meant she may be responsible for repainting them herself at her own expense at the end of her own tenancy if the tenant coming in after her did not like them she chose not to keep them. Not only does this dispute the tenant's evidence that the next tenant did not want the colour returned to a neutral shade, it also corroborates what the landlord has said that is if permission is given to paint walls, the walls must be returned to the original colour if the next tenant does not want to be responsible for repainting at the end of their own tenancy.

I find that the evidence shows that the tenant, having painted the walls blue, was required to change them back to their original neutral shade and, in fact, the evidence shows that the tenant did attempt to do so. However, he did not apply a primer or basecoat and as a result the blue has bled through the beige paint and it was necessary for the landlord to repaint the walls properly. I find that the landlord's costs of \$520.00 to be reasonable and I will allow the landlord's claim in that amount.

With respect to the draperies, even if I accept that "Kath" told the tenant that the draperies were washable and he could put them into the washing machine. Having provided this information I find that there is a reasonable expectation that the person taking on this task would use care to ensure that the draperies would not shrink. While the tenant disputes that the draperies have shrunk, I accept the landlord's testimony

that the draperies have shrunk and the photographs that show that the draperies hang considerably shorter than full length draperies ought to. I will therefore allow the landlord's very reasonable claim in the sum of \$252.00 for new draperies.

Finally, with respect to the keys Residential Tenancy Act Policy states:

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

Clearly it is the tenant's responsibility to return the keys. A tenant need not wait to be asked to do so. The evidence of both parties is that the tenant did not return the keys. I find that it was therefore necessary for the landlord to have the locks changed for the safety of the next tenant. I will therefore allow the landlords claim in this regard in the amount of \$100.00.

As the landlord has been successful in his claims I will also allow him to recover the filing fee paid for this application.

I will allow the landlord to retain the security deposit in partial satisfaction of his claim and issue a monetary award for the balance owing by the tenant calculated as follows:

Painting	\$520.00
Draperies	252.00
Rekeying locks	100.00
Filing fee	50.00
Less security deposit	-475.00
Balance remaining	\$447.00

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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*.
