



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord. The tenant's application filed September 24, 2010 seeks:

1. A monetary Order to recover a security deposit in the sum of \$425.00; and
2. A monetary Order to recover the filing fee paid for this application.

The landlord's application filed January 13, 2011 seeks:

1. A monetary order for damage to the rental unit;
2. An Order authorizing the landlord to retain the security deposit; and
3. A monetary Order to recover the filing fee paid for this application.

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

Issue(s) to be Decided

If either party is entitled to the Orders sought.

Background and Evidence

The evidence is that this tenancy began August 8, 2009 at which time the tenant paid a security deposit of \$425.00. The tenancy ended on September 1, 2010. The tenant testified that the landlord has not returned her security deposit. The tenant testified that she did not provide her forwarding address to the landlord at the time she vacated the rental unit and says it was on the Application for Dispute Resolution she filed seeking the return of the deposit.

The landlord testified that he did not return the deposit because he did not have the tenant's forwarding address. The landlord submitted a Condition Inspection Report he says details the condition of the property at move-in. With respect to move out the

landlord says he provided two opportunities for the tenant to attend to complete the report but she did not attend and he prepared the report on his own.

The landlord says the tenant has damaged portions of the laminate wood flooring, a cabinet door and that the tenant stencilled a wall in the rental unit without his permission. The landlord provided photographs of the flooring and the cabinet damage. The landlord says the tenant did remove the stencil but it caused some damage and the words were still visible such that it was necessary to repaint the wall. The landlord provided an invoice for the repairs as follows:

Repair Laminate Floor	\$160.00
Prepare and paint bedroom wall	220.00
Replace cabinet under sink	250.00
HST	74.40
Grand Total	\$694.40

The tenant responded that she did not sign the move-in inspection report nor was she given ample opportunity to attend to go through the move-out portion of the report. The tenant says the laminate floors were scratched when she moved in. The tenant agrees that she stencilled the wall but says she believes the repair costs to be too high. The tenant testified that she did damage the cabinet door but believes this to be normal wear and tear.

Analysis

With respect to the tenant's claim Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

The triggering event is the provision by the tenant of the forwarding address in writing. The tenant testified that she did not provide her forwarding address to the landlord in writing however he did receive it as it was set out on her Application for Dispute Resolution. I do not find that providing a forwarding address set out in an Application for Dispute Resolution to be the form of notice contemplated by the Act in that it would

be sufficient to put the landlord on notice that he must return the deposit or make application to retain it as set out in Section 38(1).

In considering the landlord's claims I find that he has failed to provide sufficient evidence to show that the tenant caused the damaged to the laminate flooring. While the landlord has submitted a Condition Inspection Report as evidence of the condition of the rental unit at move-in, I give this report no weight as it was not signed by the tenant at move-in to clearly document the condition of the floors at move-in.

The tenant has admitted that she stencilled one of the bedrooms walls and, having done so, she is required to return the wall to the condition it was in when she moved in. The landlord testified that he had to have the wall prepared and repainted at a cost of \$220.00. I accept the testimony of both parties and I find the sum of \$220.00 reasonable in the circumstances and will make this award in favour of the landlord.

The tenant has also admitted causing the damage to the cabinet door. While the tenant believes this damage is "normal wear and tear" I do not agree. Wear and tear refers to natural deterioration that occurs due to aging and other natural forces. A gouge in a cabinet door does not occur from natural deterioration that occurs due to aging or other natural forces, whether intended or not, I find that it is damage and not normal wear and tear. I will therefore allow the landlord's claim in this regard in the sum of \$250.00.

The tenant's claim is dismissed. I will make the following awards in favour of the landlord including an award to recover the filing fee because the landlord has been mostly successful with this claim:

Prepare and paint bedroom wall	220.00
Replace cabinet under sink	250.00
HST	56.40
Less security deposit held by the landlord (Paid August 1, 2009 – no interest payable)	-425.00
Filing Fee	50.00
Total payable by the tenant to the landlord	151.40

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*.