



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNR, MNSD

Introduction

This was an application by the landlords for a monetary order and an order to retain the security deposit. The hearing was conducted by conference call.

Issue(s) to be Decided

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

Background and Evidence

The rental unit is a basement suite in the landlord's house in Abbotsford. The tenancy began on February 1, 2009. Monthly rent was \$650.00. The tenant paid a security deposit of \$325.00 at the commencement of the tenancy.

The landlord testified that the tenancy ended on April 30, 2010. He said that the tenant told the landlord that she needed to have her security deposit to use as a deposit for her new accommodation. He said that the landlord gave the tenant \$200.00 being part of her security deposit before the tenancy ended and the tenant promised that she would make sure the rental unit was properly cleaned at the end of the tenancy. The landlord did not submit any document or record with respect to the repayment.

The landlord testified that the tenant caused extensive damage to the rental unit; that she did not clean the unit and that she left the rental unit full of garbage. The landlord

submitted photographs that he testified showed the interior of the rental unit after the tenancy ended.

The landlord filed two applications claiming the same relief. They were both scheduled for hearing at the same time. In the first application the landlord claimed payment of the sum of \$2,150.00. The landlord said that the tenants caused hundreds of dollars of damage. He claimed payment of three months' rent. In the second application the landlord claimed payment of the sum of \$5,830.00 made up of \$3,030.0 for damages to the basement and \$2,600 for four months of rent based on the landlord's assertion that he has not been able to rent it out to anyone, even after months of repairs and cleaning. The landlord claimed \$400.00 to replace: "all the rug in three rooms", \$2,000.00 to redo cracked and mouldy tiles in the bathroom, \$250.00 to replace blinds, \$80.00 to replace broken lights and \$300.00 to repaint. The landlord also added the alleged \$200.00 security deposit repayment to his claim. I consider the second application by the landlord to have superseded and replaced the first application and I have therefore disregarded the first application.

The landlord testified that the tenant did not return the key and for reasons not explained he said that the landlord waited for one month after the tenancy ended before entering the rental unit.

The landlord submitted some receipts from Canadian Tire and Home Depot as follows:

Canadian Tire September 26, 2010 wood filler	\$5.59
Home Depot August 21, 2010 nails, ant kill	\$10.73
Home Depot November 14, 2010, unspecified	\$11.18
Home Depot July 18, 2010 Oak Cove	\$108.64
Home Depot August 15, 2010 160 WW Hood	\$50.39
Home Depot July 18, 2010 Pred Bloks	\$7.83
Home Depot October 2, 2010 Wall base	\$21.95
Home Depot August 29, 2010 mini blinds	\$19.01
Rona Combo Oct 99, 2010 Flushmount 2 @ \$14.99	\$26.98
Home Depot August 22, 2010 Mix	\$27.99

The landlord said that the tenant broke tiles in the shower and caused damage that requires that the bathroom be retiled and the shower door replaced. The landlord submitted a handwritten invoice dated Sept 05 – 2010 for “New tiles, Drywall, some repairs Drywall, Floor tiles, New Shower Door for a price of \$1,894.00. The landlord testified that the work has not been done because “the landlord cannot afford it”. According to the landlord he is waiting until a monetary award is granted to the landlord before performing repairs to the rental unit.

The landlord testified that he replaced blinds damaged by the tenant at a cost of \$46.75 and a stove hood at a cost of \$50.39.

The tenant testified that she moved out of the rental unit on April 12, 2010. She left the keys in the rental unit. She said that she did not receive \$200.00 from the landlord. She testified that she borrowed \$20.00 from the landlord, but never received \$200.00 from the deposit.

The tenant testified that the bathroom tile around the nozzle for the bathtub was cracked when the tenancy started. She testified that the shower door was broken from the outset of the tenancy and she used a bath curtain because the shower door did not close. The toilet leaked throughout the tenancy.

The tenant acknowledged that she broke an outside light fixture when she was moving out of the rental unit. She said that there were light fixtures missing inside the rental unit from the beginning of the tenancy. The tenant disputed the landlord's photographic evidence. She said, as did her mother, S.H. who testified on her behalf, that the pictures did not show the condition of the rental unit at the end of the tenancy. The tenant said that some of the pictures must have been taken at some other time because they showed a state of uncleanliness of the rental unit, of the appliances and sinks and fixtures that was not the state of the unit after the tenant cleaned and moved out. The tenant said that a picture that purported to show garbage left behind by the tenant was a

staged photograph; in the picture there was a plastic garbage bag that had been left by the tenant for pickup, but the landlord had placed in the picture a large assortment of trash and discarded items that did not belong to the tenant and had not been left behind by her. The tenant testified that the landlord replaced the basic baseboard moulding in the rental unit with 100 feet of Oak Moulding and she submitted that the landlord was attempting to upgrade and improve the rental unit at the tenant's expense.

Analysis and Conclusion

The tenant testified that she moved out of the rental unit on April 12, 2010 and the landlord was aware that she had moved. The landlord claimed to have waited until the end of May, 2010 before entering the rental unit to perform some cleaning and repairs. The landlord testified that he has not repaired the rental unit because the landlord cannot afford the repairs. Even were I to accept that the landlord's repair claims were entirely legitimate, the landlord has an obligation to act promptly so as to mitigate his damages. The landlord has a duty to take all reasonable steps to mitigate any loss said to be due to the tenant's breach of her obligations under the tenancy agreement. Neglecting to act even to enter the rental unit for a month and a half does not constitute a proper attempt to mitigate.

The landlord did not conduct a condition inspection of the rental unit when the tenancy began. I find that the landlord has failed to prove on a balance of probabilities that the tenant is responsible for the replacement of rugs, for bathroom repairs and re-tiling, or for re-painting the rental unit. The tenant acknowledged breaking an outside light fixture when moving furniture. It appears from the receipts submitted that the landlord bought two lights at \$14.99 each I allow the claim in the amount of \$14.99 for a light fixture. The landlord claimed \$250.00 to replace blinds. The evidence submitted shows that the landlord spent \$19.01 on mini-blinds; I allow the claim for blinds in the amount of \$19.01.

Most of the receipts submitted by the landlord do not relate to specific claims made in the application for dispute resolution. Apart from the amounts mentioned I make no award with respect to other receipts and invoices submitted by the landlord.

I do not allow the landlord's claim for rent in any amount. The landlord has failed to provide any evidence that he took any steps to re-rent the unit. The tenant moved out in mid April. The landlord did nothing in April and nothing in May. The landlord claimed in his application that he has not been able to rent it out even after months of repairs and cleaning. The landlord claimed that it has not done much of the work said to be necessary to repair damage alleged to have been caused by the tenant. The landlord has failed to prove that the tenant caused the damage complained of and the landlord has not provided evidence to show what has been done to render the unit rentable and what steps have been taken to advertise the unit for rent. In the absence of this evidence the claim for rent is dismissed without leave to reapply

In the absence of any condition inspection report and having regard to the tenant's testimony and her mother's testimony that the landlord's pictures do not show the condition of the rental unit at the end of the tenancy I find that the claims of the landlord, save those I have allowed, have not been proven on a balance of probabilities and they are therefore dismissed without leave to reapply. The landlord has not proven on a balance of probabilities that \$200.00 of the tenant's security deposit was returned to her. I find that the tenant borrowed \$20.00 from the landlord and the deposit was reduced by that amount, leaving a net deposit of \$305.00 held by the landlord.

I find the landlord is entitled to recover \$25.00 of the filing fees paid for the applications for dispute resolution for a total monetary award to the landlord of \$59.00.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH
ARBITRATION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been allowed in an amount less than the amount of the deposit held by the landlord it is appropriate that I order the return of the remainder of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$246.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: January 20, 2011.
