



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 18, 2011 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 20, 2011 for:

1. A Monetary Order for damages to the unit- Section 67;
2. An Order to keep all or part of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The tenancy began on March 1, 2008 and ended on April 30, 2011. Rent in the amount of \$1,320. was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of

\$625.00. A move-in inspection was conducted by both parties at the beginning of the tenancy.

The Tenant states that no room to room condition inspection was conducted between the Tenant and Landlord at move-out and that the Landlord did not have a form to complete such an inspection. The Tenant states that the Landlord did meet her at the unit on her move-out day. The Landlord states that a move-out inspection was conducted by both and that he later filled in the form and sent the Tenant a copy. The Landlord states that he took pictures of the unit after the Tenant was moved out and submitted these pictures as evidence. The Tenant states that the pictures cannot be taken as evidence of the condition of the unit as the Landlord may have created some of the damages claimed after she was gone. The Tenant states that the Landlord informed her on the last day of her tenancy that he was going to paint the walls of the unit.

The Landlord states that the Tenant left dents on the walls of the office and hallway and scuff marks on the walls of the office, inside the closet and living room. The Landlord states that it was necessary to paint the unit and claims the amount of \$500.00 for labour and \$171.37 for materials. The Tenant states that the walls of the unit were wiped down but that the scuff marks would not come off. The Tenant states that the dents were small and could have been puttied and retouched with paint. The Tenant states that the remainder of the areas claimed by the Landlord are the result of wear and tear and that, in particular, there were areas in the unit where the paint was chipping due to age.

The Landlord states that the Tenant failed to clean the carpets at the end of the tenancy and claims the amount of \$159.60. The Tenant states that at the end of the tenancy, a carpet cleaning company was booked by the Tenant for the last day of the tenancy but that the Landlord informed her not to clean the carpets as the walls would be painted first. The Landlord agrees that the Tenant was told to cancel the cleaning but states that this did not relieve her of the obligation to pay for the costs of cleaning the carpets

and that the Tenant had offered to pay for the cleaning anyway. The Tenant states that she did not offer to pay for the cleaning of the carpets after the painting job was done.

The Landlord states that a blind was missing and claims the amount of \$32.45 for its replacement. The Tenant states that the blinds were made of cheap vinyl and that the wind from the window bent the blinds during the tenancy so she removed them. The Tenant states that the amount claimed by the Landlord is unreasonably high and that the same blinds could be purchased for approximately \$16.00.

The Landlord states that that the window sill was damaged, a sliding door was damaged and the bathroom fan was dirty. The Landlord claims the amount of \$50.00 for the labour required to fix and clean the items. The Tenant does not dispute the unclean fan but states that the window sill was damaged at move-in, although it is not marked on the move-in condition report, and that the sliding door was only off the tracks and was easily placed back on the tracks.

The Landlord states that the Tenant failed to reserve the elevator for her move-out and as a result, the Strata fined the Landlord for this failure. The Landlord states that the Tenant was aware of the Strata rules about reserving the elevator and claims the amount of \$200.00 in compensation for the fine. The Tenant states that she was not able to reserve the elevator on the day she moved out as the caretaker was not at the building. It is noted that the Landlord has not filed any Strata rules in relation to this fine and the tenancy agreement contains no reference to this rule or requirement.

Analysis

Sections 23 and 35 of the Act require a landlord and tenant to mutually conduct and fill out both a move-in and move-out inspection report. Although the Parties dispute the conduct of a move-out inspection, neither Party disputes that the Landlord alone filled out the form following the move-out and forwarded this form to the Tenant. If the move-out inspection was mutually conducted, as claimed by the Landlord, I find it difficult to accept that the report was not filled in at the same time. The later completion of the

report therefore supports the Tenant's argument that no move-out inspection was conducted and reliance cannot be had on the form filled out by the Landlord alone for evidence of damages to the unit.

Considering the undisputed evidence that the Landlord told the Tenant not to clean the carpets as the walls were being painted, I find that this intervention by the Landlord relieved the Tenant of her obligation to clean the carpets following the painting of the walls and I dismiss this part of the Landlord's application. Given the lack of a mutual move out inspection, the Tenant's evidence of limited wall damage and the Landlord's stated intention to paint the entire unit, I cannot find that the cost incurred by the Landlord is the responsibility of the Tenant and I dismiss this part of the Landlord's application. Given the move-in report, the Tenants agreement of dirt on the fan and the pictures of the damage to the sliding door, I find that the Landlord has substantiated his claim to these repairs and I find the Landlord entitled to the amount of **\$50.00** as claimed. Given the undisputed evidence that one blind was missing and considering the receipt provided by the Landlord, I find that the Landlord has substantiated an entitlement to the amount of **\$32.45**.

Although the Landlord claims compensation for a Strata fine, as there is no reference in, or an addendum attached to, the tenancy agreement for such a charge or fine being the responsibility of the Tenant, I find that the Landlord has failed to substantiate that the Tenant is responsible for a Strata fine for failing to properly reserve the elevator and I dismiss this part of the Landlord's application.

As each party has been successful to an extent, I make no award in relation to the filing fee. I order the Landlord to deduct the amount of **\$82.45** (\$50.00 + 32.45) from the security deposit and interest in the amount of \$632.84 and return the remaining security deposit of **\$550.39** to the Tenant

Conclusion

I order that the Landlord retain the amount of 82.45 from the **deposit** and interest of \$632.84 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the remaining amount of **\$550.39**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.

Dated: August 31, 2011.

Residential Tenancy Branch