



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$4,922.40 for damage caused by the tenant to the rental unit?

Background and Evidence

The landlord has made the following claim:

Invoiced Claim	
Replace lock set	115.00
Remove paint from kitchen cabinets	40.00
Replace painted receptacles	40.00
Repair, caulk, fill walls, trim, baseboards	570.00
Replace missing trim	60.00
Clean and paint closet – mould	80.00
Remove tub caulking	0
Drywall repair	135.00
Replace window in bedroom	165.00
Paint all rooms	1800.00
HST on invoice	432.00

TOTAL	3992.00
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Non-invoiced	
Replace rear lock set	115.00
Replace screen door	120.00
Replace window screen	60.00
Replace patio window frame	80.00
Remove varnish on French doors	40.00
Remove surveillance wire and holes	40.00
Repair kitchen cabinet chip	40.00
HST	95.40
TOTAL	890.40

The landlord withdrew the claim for tub caulking.

The tenancy commenced on April 5, 2010; rent was \$1,550.00 per month, due on the first day of each month. A deposit was paid; it has been disbursed as Ordered in a previous hearing. The tenant vacated the home on April 3, 2011.

The landlord testified that he did not view the home at the time the tenant took possession; nor did he attend at the unit when the tenant vacated the home. The landlord resides in Calgary; the home is in Victoria. Prior to renting the home out in 2010 it had been occupied for the previous year; before which an extensive renovation had been completed.

The unit was painted in 2007; the tenant was given permission to paint during her tenancy. The tenant submitted that this was because the paint in the kitchen had been done poorly; the tenant testified this was the only room she painted.

The parties agreed that on February 4, 2011, the police attended at the rental unit and caused damage to the doors, as the result of a forced entry. The tenant acknowledged that she was in custody during the time the police attended at the home. There was no evidence submitted which supported the attendance by the police was founded; although the landlord stated the tenant has an upcoming court date. The landlord provided a copy of a September 13, 2011, letter from the Victoria Police Department in response to a request for information made by the landlord. The police replied that in the absence of an Order from the Residential Tenancy Branch or consent of the tenant, the landlord is unable to obtain disclosure of personal information compiled as part of an investigation into a possible violation of law. The tenant questioned the landlord's knowledge of any future court date. The tenant believes the landlord's insurance should pay for damage caused by the authorities.

The landlord's witness, a friend who is a realtor, stated that he viewed the home at the end of the previous tenancy and determined that the unit was in "fair condition" prior to the tenant taking possession in April 2010. The witness went to the home after the police entry and saw that the front door frame was damaged.

The witness viewed the home for the purpose of listing it for sale; the tenant stated the home was listed before she vacated the unit. When the witness walked through the home he noticed a number of deficiencies; the paint work was poor, the back door was broken, there was a hole in the bathroom wall and he determined the home was not in nearly as satisfactory condition as it had been when the tenancy had begun. The witness, upon questioning by the tenant, denied having seen damage to the bathroom wall and floors at the start of her tenancy.

The landlord submitted a number of photographs of the unit that showed damage caused by the police, the need for some cleaning, floor damage, screen door damage cable installed outside of the home, damage to exterior trim, damage to the veneered kitchen cabinet, a broken toilet roll mount, poor painting and varnish painted on the windows of a French door.

The landlord testified that the tenant was responsible for the costs incurred and the costs he has estimated; as the unit was not damaged at the start of the tenancy. The tenant countered that the unit was poorly painted; that she had permission to paint the kitchen; that the landlord knew about the holes in the bathroom wall at the start of the tenancy, that she fully cleaned the home prior to moving out and that the trim was damaged before she moved into the unit. The cable installed outside of the unit was installed by TELUS. The landlord suspected the tenant had installed a surveillance system.

The tenant supplied photographs of the home she submitted were taken after she had moved out, which showed the same front door and lock set; the tenant alleged the door and lock set were not replaced. One photo of the door was taken on February 3, 2011; the second photograph was taken on August 3, 2011. Each photograph showed the same style door, with identical glass detailing. Photographs of the back doors were also supplied, taken in February and August 2011.

The tenant supplied a written statement that indicated the trim had been missing at the start of the tenancy, that she never saw mould in the closet and the need for further painting was due to normal wear and tear. The tenant stated the window was cracked when she moved into the unit and that there was nothing wrong with the patio doors when she vacated. The tenant denied damaging the kitchen cabinets.

The tenant supplied copies of receipt for expenses she incurred during the tenancy, in the sum of \$501.69; including an oven element; paint; paint supplies, a latch; a light bulb; garbage removal completed in April 2011 and paint for a fence.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of verification of the costs claimed for the non-invoiced items, I find that portion of the claim is dismissed. The landlord used the costs included on the invoice for items already repaired, as a guide for costs he has yet to incur; however, in the absence of a professional estimate for costs, I find that the claim is not supported. Further, in the absence of move-in and move-out condition inspection reports, as required by the *Act*, and as a result of the disputed testimony, I find that this portion of the claim is dismissed.

Residential Tenancy Branch policy suggests that useful lifespan of paint is 4 years; I find this to be a reasonable stance. The unit was last painted in 2007; therefore, the unit would be due for painting. The landlord allowed the tenant to paint without ensuring she could provide a professional job; the landlord cannot now claim the tenant's work was substandard. Therefore, the claim for painting costs is dismissed.

In the absence of condition inspection reports setting out the condition of the unit at the start of the tenancy and at the conclusion of the tenancy, the landlord must provide a preponderance of evidence that the tenant or her guests caused damage to the unit. The parties disagreed on the state of the unit and the landlord's witness stated the unit was in "fair condition" at the start of the tenancy. The witness testified that the unit was not in the same condition at the end of the tenancy, but in the absence of any evidence supporting what "fair condition" means, I find that the landlord has failed to prove, on the balance of probabilities, the condition of the unit at the end of the tenancy, compared to that at the start of the tenancy.

In relation to the damage caused by the police, there is no doubt that the tenant was held in custody while the police entered the home; the tenant has confirmed this. I find that the tenant was vague in relation to the question of responsibility for the police entry and, even though there is no evidence that the tenant has committed an offence, I find, on the balance of probabilities, that forced entry was made to the home due to police concerns in relation to the tenant and that she must be held responsible for the damage.

The tenant has suggested that the door and lock set was not replaced; supported by the photographs she submitted taken during and after the tenancy. I find, on the balance of probabilities, that the door and lock set was replaced, supported by the invoice supplied by the landlord listing the door at \$396.00 plus tax and labour. There is no reason that the landlord could not have installed a door identical to that originally in the home and I find the landlord is entitled to compensation for the door in the sum of \$555.00.

The balance of the landlord's claim is dismissed. In the absence of evidence proving the state of the unit at the start and end of the tenancy, I find that the landlord has failed to prove the tenant was responsible for costs incurred.

I find that the landlord's application has some merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$605.00, which is comprised of \$555.00 in damage to the rental unit and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$605.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia 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: November 23, 2011.

Residential Tenancy Branch