



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was the hearing of applications by the landlord and by the tenants. The landlord's property manager and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and if so, in what amount?
Are the tenants entitled to a monetary order in the amount of their security deposit?

Background and Evidence

The rental unit is an apartment in New Westminster. The tenancy began on December 1, 2010. Monthly rent when the tenancy commenced was \$725.00. The tenants paid a security deposit of \$362.50.

There was a previous dispute resolution proceeding regarding this tenancy. The tenants applied to cancel a one month Notice to End Tenancy and claimed a monetary order. At the hearing on February 17, 2012, the tenants confirmed that they were moving at the end of February and withdrew their application to set aside the Notice to End Tenancy. The tenants were granted a monetary order in the amount of \$168.00 as their cost to supply a missing widow blind.

In the hearing before me the tenants claimed the return of their security deposit in the amount of \$362.50; they also asked for payment of the \$168.00 awarded by the February 17th decision.

The landlord claimed payment of the sum of \$656.50 and an order to retain the tenants' security deposit. The landlord included in its claim amounts for the cost to send registered mailings and a charge for printing photographs.

The landlord's representative testified that there were both horizontal and vertical blinds in the rental unit and that the tenants took down a set of vertical blinds installed by the

landlord. He said the vertical blinds were missing at the end of the tenancy. The landlord has not replaced the vertical blinds and there are new tenants in the rental unit. The landlord claimed payment of the sum of \$168.00 because this was the amount awarded to the tenants for a replacement blind in the past proceeding.

The landlord claimed payment of the sum of \$472.33 said to be the cost to re-paint the rental unit pursuant to an estimate and quote. The landlord's representative said the unit was freshly painted just before the tenancy commenced. He said that the tenants caused damage by filling numerous nail holes that they created in the walls of the rental unit; the walls had to be sanded and re-painted as a result. He produced a form of invoice in the stated amount. He said that apart from the paint issues the rental unit was left in impeccable condition. The landlord produced a copy of a condition inspection form. It was not signed by the tenants. The landlord's representative testified that the tenants refused to sign the condition inspection report when they moved in and he said they did not make themselves available to participate in an inspection when they moved out even though the landlord posted several notices of opportunity to schedule an inspection.

The tenants testified that the rental unit had not been painted when they moved in; they said the unit was filthy and needed extensive cleaning. The tenants said that the vertical blind mentioned by the landlord was in poor shape and missing panels. The tenant said that the landlord told them they could remove it; they did so and discarded it. The tenants denied that they refused to sign a condition inspection form. They said that they did not receive any notices from the landlord to participate in a condition inspection because they had fully moved out of the rental unit before the landlord posted any of his notices on the door of the rental unit.

Analysis and Conclusion

I accept the tenants' testimony that the vertical blind in the rental unit was in poor condition and that it was discarded with the tacit approval of the landlord. I deny the landlord's claim for blind replacement and I note that the blind has not been replaced.

The landlord has claimed that the rental unit was freshly painted in three colours when the tenancy commenced in December, 2010. The landlord's representative referred to a condition inspection form. It was unsigned by the tenants. The comments section referred to new paint throughout the rental unit. The form submitted by the landlord contained recorded dates that were inconsistent with the tenancy; it stated a possession date of December 1, 2011, not 2010. The report form was also filled in, although not signed to state that the tenants agreed to a \$362.50 deduction from the security deposit.

The provision with respect to the deduction was dated November 30, 2011, but the tenants moved out on February 25, 2012. The form stated the tenant's forwarding address. I accept the tenant's testimony that he was not given a copy of the report and, having not seen it, that he did not refuse to sign it. Because of the inconsistencies in the condition inspection form, I attach little weight to the comments therein.

The onus is on the landlord to prove his claim for damages on a balance of probabilities. The tenant denied that the rental unit was freshly painted when he moved in. The tenants commented that the rental unit was not freshly painted, but it was oddly painted in three different colours. The landlord's representative said that it is the landlord's standard practice to paint all the units in the rental property in a tri-colour motif.

I accept the tenant's testimony that the rental unit was not freshly painted when the tenancy began. The tenants provided testimony that the rental unit required extensive cleaning and I consider it unlikely that the unit would have been completely repainted, but left in a filthy condition, as described by the tenants. I was not provided with any documents such as an invoice for painting prior to the commencement of the tenancy.

I find that the filled nail holes left by the tenants constituted reasonable wear and tear and I deny the landlord's claim for a monetary order for re-painting. The landlord's claim is dismissed without leave to reapply.

The tenants are entitled to the return of their security deposit and I grant them a monetary order in the amount of \$362.50. The tenants did not pay a filing fee and I make no order with respect to costs in favour of the tenants. This order may be registered in the Small Claims Court and enforced as an order of that court. The tenants already have a monetary order in the amount of \$168.00; it is up to the tenants to enforce that order and the claim for a further order in the same amount is dismissed without leave to reapply.

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: May 15, 2012.

Residential Tenancy Branch