



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit is approximately 4 years old. Prior to the start of the tenancy which is the subject of this dispute, the tenants resided in the unit for approximately 15 to 18 months pursuant to a tenancy agreement with the previous owner. It is understood that these were not the first tenants to reside in the unit.

Following the purchase of the unit by the present landlord, the parties entered into a written tenancy agreement for a term from November 15, 2011 to April 30, 2012. At the time when this agreement was entered into, a move-in condition inspection report was completed with the participation of both parties on November 15, 2011. There is conflicting testimony in relation to how careful and thorough the move-in condition inspection process was: the landlord takes the position that the parties did a walk through of the unit at the start of their agreement, whereas the tenant testified that signing off on the move-in condition inspection report was a formality without substance.

Monthly rent of \$2,200.00 was due and payable in advance on the first day of each month. The security deposit of \$1,100.00, which was paid by the tenants to the previous owner, was transferred to the current landlord upon his purchase of the unit. The tenants vacated the unit at the end of April 2012. There is conflicting testimony around why the move-out condition inspection report was completed without the

participation of the tenants on April 28, 2012. After the tenants vacated the unit, the landlord moved into the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence, which includes but is not limited to photographs, and testimony of the parties, the various aspects of the landlord's claim and my findings around each are set out below. Section 63 of the Act speaks to the **Opportunity to settle dispute**. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution.

\$1,500.00: interior painting. The entire tenancy spanned a period of approximately 21 to 24 months, and the tenant testified that the unit was last painted immediately prior to the original start of the tenancy. Residential Tenancy Policy Guideline # 37 speaks to the "Useful Life of Work Done or Thing Purchased," and provides that the useful life of interior paint is 4 years. In the result, by the end of this tenancy the interior paint had been subjected to 2 years of at least normal wear and tear. Further, however, when the move-in condition inspection report was completed, there is no indication whatsoever of any problems with the interior paint. I find that there is insufficient evidence that the tenants subjected the interior paint to sufficient wear and tear between the time when the move-in condition inspection report was completed on November 15, 2011, and the time when the move-out condition inspection report was completed on April 28, 2012, to warrant repainting of the entire interior of the unit. Rather, I find it is likely that completion of the move-in condition inspection and report were not undertaken carefully and thoroughly. As well, the tenant noted that smoking was permitted in the unit when the original tenancy first began, and that it was only after the current landlord's purchase of the unit when smoking was not permitted in the unit. In summary, I find on a balance of probabilities that there is insufficient evidence to support this aspect of the landlord's claim and it is, therefore, hereby dismissed.

\$550.00: replacement of blinds in bedroom. In short, I find on a balance of probabilities that there is insufficient evidence that the tenants are responsible for the missing blind. Further, the landlord has not incurred any cost as no replacement purchase has been made. This aspect of the application is, therefore, hereby dismissed.

\$480.00*: cleaning in the unit. Pursuant to section 63 of the Act, the parties reached agreement, as a result of which the tenants bear full responsibility for this aspect of the landlord's claim.

\$612.00: hardwood floor replacement, garburator repair & drywall repair. I find on a balance of probabilities that there is insufficient evidence that the tenants are responsible for this replacement / these repairs. Comments made above in relation to the move-in & move-out condition inspection reports also apply to this aspect of the claim. Further, the landlord has not incurred any of the projected costs as the replacement / repairs have not been undertaken. Accordingly, this aspect of the application is hereby dismissed.

\$130.45*: replacement of light bulbs. Pursuant to section 63 of the Act, the parties reached agreement, as a result of which the tenants bear full responsibility for this aspect of the landlord's claim.

\$110.65*: rug doctor rental and shampoo. Pursuant to section 63 of the Act, the parties reached agreement, as a result of which the tenants bear full responsibility for this aspect of the landlord's claim.

\$392.22: replacement of garburator. I find on a balance of probabilities that there is insufficient evidence that the tenants are responsible for this cost. I also find that the garburator is likely the original garburator which was installed in the unit approximately 4 years ago, and that it has sustained unknown wear and tear throughout that period. Additionally, as the landlord has not purchased a new garburator, no replacement cost has been incurred. This aspect of the application is, therefore, hereby dismissed.

\$613.03: replacement of electric cook top. I find on a balance of probabilities that there is insufficient evidence that the tenants should bear responsibility for the cost claimed. Comments made above in relation to the move-in and move-out condition inspection reports also apply to this aspect of the landlord's claim. As well, since the landlord has not purchased a new electric cook top, no replacement cost has been incurred. In short, this aspect of the application is hereby dismissed.

\$600.00: cleaning, organization of trades and services and labour (30 hours x \$20.00 per hour). I find on a balance of probabilities that the landlord has established entitlement limited to **\$320.00***, which is calculated on the basis of 16 hours x \$20.00 per hour.

\$50.00*: filing fee. As the landlord has achieved a measure of success with his application, I find that he has established entitlement to recovery of the full amount of the filing fee.

As for the monetary order, I find that the landlord has established a claim of \$1,091.10, as set out above. I order that the landlord retain this amount from the security deposit of \$1,100.00, and I order the landlord to FORTHWITH pay the balance to the tenants in the amount of \$8.90 (\$1,100.00 - \$1,091.10). Further, I grant the tenants a monetary order under section 67 of the Act for this amount.

Conclusion

I order that the landlord may withhold \$1,091.10 from the tenants' security deposit.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$8.90**. Should it be necessary, this order may be served on the landlord, 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: July 11, 2012.

Residential Tenancy Branch