



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 reconvened hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing held on December 4, 2012. At the January 21, 2013 reconvened hearing they were reminded they continued to provide affirmed testimony.

Preliminary Matters

The tenant indicated that she has now applied for dispute resolution, with a hearing scheduled on January 28, 2013. The tenant has applied requesting return of the security deposit. I explained that as the landlord has claimed against the deposit I will be determining the outcome of the deposit and, as policy suggests, order any portion of the deposit to the tenant that may be remaining after the landlord's claim is decided.

The tenant confirmed that she would cancel the hearing she has scheduled for January 28, 2013 and agreed that the landlord would not be required to attend that hearing.

The tenant had submitted 16 pages of evidence which she believed would be considered at this hearing; that evidence was part of the tenant's application and was not attached to this hearing. The tenant was at liberty to read any of those documents in as evidence. The landlord confirmed that he had the documents.

The tenant confirmed receipt of additional evidence submitted by the landlord.

During the reconvened hearing the landlord again indicated he wished to increase the amount of the monetary claim. I reviewed my interim decision with the landlord, in which the matter of amendment or withdrawal was documented. The landlord was reminded that on December 4, 2012 he had been given the opportunity to withdraw and reapply; he had chosen not to do so. The landlord also chose not to request any clarification of my December 4, 2012 interim decision.

Therefore, as the matter of amendment and the amount of claim had been decided on December 4, 2012 the hearing proceeded based on the original application that the landlord filed on September 13, 2012.

Issues to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$1,550.00?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on February 1, 2011 for a fixed-term ending on January 31, 2013. A security deposit in the sum of \$750.00 was paid.

The move-in condition inspection report was not completed until March 1, 2012. A copy of the tenancy agreement and move-in condition inspection report was provided as evidence. The inspection report indicated many areas; such as walls and trim were in fair or good condition; the entry had a loose tile and there were some marks on a kitchen countertop. The report indicated that the entry tile needed grouting.

A move-out condition inspection was not scheduled with the tenant; the landlord said he tried to ask the tenant for the keys and that they had tried to meet. The tenant agreed that the landlord should be entitled to the cost of her keys, as she did not return them, but that she was not asked to complete a move-out condition inspection.

On July 27, 2012 the tenant gave the landlord notice she would vacate at the end of August. The tenant paid August rent owed and an occupant who had lived with her remained in the unit until the end of the month; at which point he entered into a tenancy agreement with the landlord, commencing September 1, 2012.

The landlord has made the following claim for compensation:

Entry and kitchen tile	\$750.00
Wall patching and paint	450.00
Laminate floor damage	350.00
TOTAL	\$1,550.00

The landlord's claim was made within 15 days of the end of the tenancy and the date the landlord was given the tenant's forwarding address.

The landlord supplied copies of photographs showing a scratch on a door and in the hallway, a small black mark on the den door frame; a cracked floor tile in the entry, a damaged tile in the kitchen, a nail hole in the kitchen wall; several dents on a section of kitchen wall; 3 small scratches in the living room laminate flooring, a scratch in the hallway flooring and a nail hole and black mark on the hallway wall.

A copy of a January 16, 2013 invoice for:

- hardwood flooring (\$1,250.00),
- paint (\$200.00), tile (\$450.00)
- patching walls (\$112.00); and
- additional paint costs (\$250.00.)

The landlord said that the entry floor tile was not cracked when the tenant moved into the unit; however, the landlord did not dispute that the entry tile had been loose and was repaired during the tenancy. The landlord believed that the tenant must have caused the tile to break by moving heavy objects across the tile.

The tenant stated that the tile had always moved as the floor was uneven. After the tile was re-grouted it did break, as the result of the uneven floor. The tenant did not know how the tile in the kitchen broke; she said that she did not cause that damage.

The walls in the unit were painted in 2010. The tenant did place some artwork on the walls and said that the small dents in the kitchen were the result of a clock that had fallen off of the wall.

The tenant confirmed that living room flooring was scratched as a result of moving a piece of furniture. The tenant said the flooring was cheap and that the section damaged could have been repaired using boards that were in the storage area; she estimated the cost of repair at no more than \$100.00. The tenant said she did not cause damage to the hallway laminate.

The tenant said that the landlord did not make arrangements to complete a move-out condition inspection and that if she had been given the opportunity to go through the unit she could have made the repairs, reducing the amount the landlord has claimed.

The tenant alleged that the claim has been made as the landlord failed to obtain payment from the tenant, as stated in the tenancy agreement, clause 9 of the addendum. Clause 9 required the tenant to pay 1 month's rent if she ended the agreement prior to the end of the fixed term. The landlord had requested this payment; the tenant had refused to pay as her occupant remained in the unit and signed an agreement commencing his tenancy September 1, 2012. The landlord submitted email

evidence dated August 27, 2012, in which the tenant was told she would not receive her deposit, as she owed the landlord the equivalent of 1 month's rent

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.

Residential Tenancy Branch policy suggests that an arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

As the move-in condition inspection report indicated that the entry tile was loose I find that the claim for repair of a broken tile in the hall is dismissed. It is not unreasonable to accept that the reason the tile was loose was due to an uneven floor; the tile was a problem at the start of the tenancy, which could well have caused the tile to break. The tile was re-grouted, but still broke. Therefore, I find that the repair is not the responsibility of the tenant. In relation to the kitchen tile, in the absence of move-out condition inspection report and any record that the tenant caused this damage, I find the portion of the claim for the kitchen tile is dismissed.

The tenant has agreed that there were several dents made to the kitchen wall, as the result of the clock falling. As this damage was not the result of normal wear and tear, I find that the landlord is entitled to nominal compensation in the sum of \$25.00. I have considered the photographs, which showed what I find to be very minimal damage to the wall.

In relation to the balance of the claim for painting, policy suggests a tenant is allowed to make a reasonable number of holes in the walls, for the purpose of hanging art. There was no evidence before me that the tenant made an unreasonable number of holes in the walls. Further, I find that the small smudges on the walls were the result of normal wear and tear. Therefore, I find that the balance of the claim for painting and wall repair is dismissed.

The tenant agreed that she did cause a scratch to the laminate flooring in the living room and that the repair cost should not exceed \$100.00. The landlord has submitted evidence that the floor was replaced with hardwood, vs. laminate. Given the tenant's confirmation of the living room floor damage and in the absence of a detailed breakdown of the cost to repair the damaged area only, with the same product, I find that the landlord is entitled to nominal compensation in the sum of \$100.00; the balance

of the claim is dismissed. In the absence of evidence that the tenant caused a scratch to the hallway floor I find that the balance of the claim for flooring is dismissed. Further, the scratch in hallway appears to be what I find to be the result of normal wear and tear one can expect will occur to laminate.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Entry and kitchen tile	\$750.00	0
Wall patching and paint	450.00	\$25.00
Laminate floor damage	350.00	100.00
TOTAL	1,550.00	\$125.00

As this claim could have been resolved between the parties, in the absence of a move-out condition inspection, which was the responsibility of the landlord to arrange, I decline filing fee costs to the landlord.

Therefore, I find that the landlord may retain \$125.00 from the \$750.00 deposit and that the balance of the deposit is Ordered returned to the tenant.

Based on these determinations I grant the tenant a monetary Order for \$625.00. In the event that the landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that clause 9 of the addendum does not comply with the Act and that it is unenforceable. This clause appears to be a penalty for ending a fixed-term tenancy and assumes losses that must be proven.

Conclusion

The landlord is entitled to retain \$125.00 from the security deposit.

The balance of the landlord's claim is dismissed.

The tenant is entitled to a monetary order for the balance of the security deposit, in the sum of \$625.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 29, 2013.

Residential Tenancy Branch