



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the tenant who is seeking a monetary order for compensation for damage and/or loss and recovery of the filing fee paid for this application.

The tenant submitted that her claim for “other” is a claim for benefit derived by the landlord.

The total amount sought by the tenant is \$1,500.00 plus recovery of the filing fee.

Both parties attended the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the tenant met the burden of proving she is entitled to the sum sought?

Background and Evidence

This tenancy began in August 2010 and ended on June 30, 2012. Rent was \$635.00 per month and the tenant paid a security deposit of \$317.50 at the start of the tenancy.

The tenant testified that although she paid rent until the end of June 2012 she moved out on June 11, 2012 intending to come back to the rental unit to clean. The tenant testified that after moving the majority of her belongings out of the rental unit she returned to spend an hour a day in the rental unit doing the cleaning. The tenant testified that she received a notification on June 26, 2012 from the landlord indicating that they intended to paint the rental unit on June 28. The tenant submits that this task is not an “emergency fix” and she did not allow the landlord to go into her suite. The tenant says that on June 27 the landlord entered her suite “...to paint and carry on other unknown activities”.

The tenant is seeking damages for unlawful entry and loss of her right to quiet enjoyment of the rental unit in the amount of \$1,500.00 which includes compensation for benefit derived, mental anguish and for the exposure to toxic paint fumes which the tenant says she suffered while cleaning the rental unit.

The tenant's witness LS testified that he entered the suite at 6 pm on June 27, 2012 and noted a distinct paint odor. LS testified that it was apparent to him that the landlord had painted the entire rental unit not just touch ups. LS said this was apparent because there was an even coating of paint on the walls and no paint patches were apparent.

The tenant submitted that she tape recorded the move-out inspection performed with the resident managers on June 30, 2012. The tenant submitted a transcript of that record in which the managers apparently say that the painting was performed on Wednesday the 27th after notice was given on Tuesday the 26th.

The landlord testified that he met with the tenant at the rental unit on May 30, 2012 to perform a final walk through at which time the tenant rescinded her notice to end her tenancy and gave notice for June 30, 2012. The landlord submits that the tenant was no longer living in the suite on May 30, 2012 but had a few miscellaneous items to move. The landlord submits that the tenant informed him she would be fully moved out by June 6, 2012. The landlord submits that during this visit on May 30 he noticed two separate large burn marks on the kitchen linoleum and countertop. He discussed this damage with the tenant noting that these would require repair as this damage was not present at the start of this tenancy. The landlord submitted the Condition Inspection Report and photographs of the damage.

On June 1, 2012 the landlord says the tenant paid full rent for June. The landlord informed her that if he could re-rent the suite prior to the end of June he would do so and return any rent she had paid. On June 4, 2012 the landlord posted a First Notice to perform a move-out Condition Inspection on June 6, 2012. The landlord says he did not hear from the tenant, however on June 6, 2012 the tenant moved the remainder of her belongings out of the rental unit except for a chair in the living room and a few cleaning supplies left in the kitchen.

The landlord posted a Final Notice to perform a Condition Inspection on June 15 for June 27th and the tenant did not respond. On June 26th the landlord posted a notice that they intended to enter the suite on June 28, 2012 between 8:00 a.m. and 4:00 p.m. "To paint unit and fix any maintenance issues" and "...to carry out Scheduled, or,

Emergency Repairs” (*reproduced as written*). The landlord submits that the tenant never disputed the notice of entry.

The landlord submits that, in accordance with the notice, on June 28, 2012 the landlord’s handyman entered the unit to perform paint touch-ups in the dining area where there were black marks. The landlord testified that they used a “green” environmentally friendly paint from Cloverdale Paints called Onni Bone Eggshell which has extremely low toxicity. The landlord submitted photographs of the touch ups performed in the rental unit.

The landlord’s managers and the tenant performed a move-out Condition Inspection report on June 30, 2012 which the tenant refused to sign. The landlord submitted a copy of that report.

The landlord submitted that the parties attended a hearing in September 2012 under file 794508 in response to an application by the landlord seeking costs for lack of cleaning and replacement of the linoleum in the rental unit. In the hearing, a settlement agreement was reached in which the landlord was allowed to retain the tenant’s security deposit in lieu of damages to the rental unit. The landlord testified that this was far under the cost of repairs and he thought this was the end of the matter. At no time did the tenant ever raise any issues with respect to the claims now made.

The landlord submitted that new tenants eventually moved into the rental unit on July 15, 2012.

Analysis

The evidence shows that the tenant was moved-out of the rental unit by either June 6 or 11, 2012 although she did pay rent until the end of June 2012. The evidence shows that the landlord supplied notice that they intended to enter into the rental unit on June 28 “To paint unit and fix any maintenance issues” and “...to carry out Scheduled, or, Emergency Repairs”. The tenant submits that the painting was done on the 27th not the 28th and that in painting the rental unit on the 27th as opposed to the 28th she suffered a loss. The tenant claims she is entitled to damages of \$1,500.00 for unlawful entry, loss of her right to quiet enjoyment, mental anguish, exposure to toxic paint fumes and because the landlord derived a benefit by entering her rental unit illegally.

Having brought this claim the tenant bears the burden of proving her version of events. First I note that despite having attended with the landlord to perform a move-out inspection on June 30, 2012 and having already had a hearing with respect to this

tenancy on September 18, 2012 whereby a settlement was reached in which the landlord was allowed to retain the tenant's security deposit in lieu of damages to the rental unit, there has been no evidence submitted that the tenant raised the issues of which she now complains with the landlord before filing her Application on February 4, 2013.

With respect to whether the painting was performed on the 27th or 28th, I make no finding. This is because whether the painting was performed on the 27th or 28th the evidence shows that the tenant no longer lived in the rental unit and that she had vacated as early as June 6 or June 11. As she was not residing in the rental unit on either the 27th or the 28th I find, based on a balance of probabilities that it is unlikely her right to quiet enjoyment of the rental unit was compromised. As to whether she suffered mental anguish and exposure to toxic paint fumes the tenant has supplied insufficient evidence such as medical reports to support a finding that she suffered in this regard.

Finally, the tenant maintains that she is entitled to compensation because the landlord derived some benefit from painting a day earlier than he might have done. Even if this were found to be true, I find that the tenant has failed to bring sufficient evidence demonstrate how the landlord gained a benefit. Especially since his evidence, that I accept, is that new tenants did not move in until July 15, 2012.

Overall I find that the tenant has failed in her burden of proving her claims. The tenant's claims are dismissed in their entirety.

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: April 24, 2013

Residential Tenancy Branch