



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD FF

Preliminary Issues:

The Landlord has named two Tenants as respondents to this dispute. The tenancy agreement and condition inspection report forms name only one Tenant, D.N. The Landlord testified that the second respondent, Z.N. is the Tenant's adult son and is listed as a person residing in the rental unit in section #11 of the tenancy agreement.

An occupant is defined in the *Residential Tenancy Policy Guideline* section 13 as follows: where a tenant or landlord allows a person who is not a tenant to move into the premises that person has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a **tenant** [emphasis added].

In this case I find the second respondent, Z.N. to be an occupant and not a tenant. Accordingly, I find this claim cannot proceed against Z.N. as he has no rights or obligations under the original tenancy agreement. The claim did proceed against D.N.

The Tenant, D.N. attended the proceeding and introduced herself as D.F. which she confirmed was her maiden name. She stated that D.N. was her former legal name through marriage and she now goes by her maiden name. Accordingly, I amended the application to include the Tenant's maiden name, pursuant to section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 10, 2013, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

Upon review of the Landlord's submissions I noted that the second package of evidence was marked "RTS: unknown" and "moved". I questioned the Tenant to clarify if she had moved and she stated that she had not moved. The Tenant confirmed that the address listed on the application was her service address; however, it was not the address where she currently resides. She confirmed receipt of the hearing documents and initial package of evidence but stated she was recently out of town so the second package of evidence sent by the Landlord could not be picked up. The Tenant confirmed she does not make alternate arrangements for her mail delivery is she is out of town. She stated that she did not provide evidence in response to this claim nor did she provide evidence or testimony to support her statement that she was out of town.

Based on the foregoing, in the absence of evidence from the Tenant to the contrary, I find the Tenant is deemed to have received the second package of evidence on February 18, 2013 that was sent by registered mail on February 12, 2013, in accordance with section 90 of the Act. That second package of evidence included copies of photos of the painted walls and the invoice from the painter. I make this finding in part because I find the Tenant's unsupported statement that she was out of town not to be credible because the package does not indicate "unclaimed" rather it indicates returned to sender unknown and moved.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; move in and move out condition inspection report; move out cleaning and inspection information; the Tenant's notice to end tenancy;

photos of the rental unit; floor plan of the unit; painting invoice; returned registered mail; and Canada Post receipts.

The parties confirmed they entered into a month to month tenancy agreement that began on October 1, 2006 and ended with proper notice on December 31, 2012. Rent was payable on the first of each month in the amount of \$815.00 and increased to an approximately amount of \$950.00 during the course of the tenancy. On September 14, 2006 the Tenant paid \$407.50 as the security deposit and on October 1, 2006 she paid \$50.00 as a remote deposit. A move in condition report was completed on October 1, 2006 and the move out condition report was completed on December 31, 2012.

Upon review of the Landlord's claim the Tenant stated she agreed to allow the Landlord to retain \$95.00 from the security deposit for carpet cleaning. She now agrees to pay the \$50.00 for the cost to change the locking door handle she installed on the bedroom door. She disputes the remainder of the claim.

The Landlord testified that, in addition to the above mentioned items, they are seeking \$350.00 for the cost of painting and to retain the \$50.00 for the remote that was not returned.

The Landlord stated that it is their practise to repaint all units where a tenant moves out after a tenancy that was greater than one year. They do not charge the tenants for the first coat of paint; however, if the unit requires more than one coat of paint then tenants are charged. In this case the Tenant had painted the unit with various colors, without the Landlord's permission, and in breach of the tenancy agreement at section 16 ***Tenant's Covenants*** (17) of the tenancy agreement which states: *Not to make any alterations, extensions, additions or improvements including painting of walls, wallpaper, etc. to the Premises.*

The Landlord pointed to the painter's invoice provided in evidence which indicates the first of coat of paint was \$433.00 and the second coat was \$348.54. They are claiming only the second coat at \$348.54 to return the unit to standard paint color.

The Tenant confirmed that she painted the rental unit with colored paint, without the Landlord's permission. She stated the unit was a white or off white color at the beginning of her tenancy. She argued the unit was left in clean and well maintained condition and she should not have to pay to repaint the unit.

The Tenant stated that she has found the remote and would like to return it to the Landlord. The Landlord advised that they would like the remote returned and would not claim the \$50.00 deposit if it was received in working condition.

Analysis

The claims for \$95.00 carpet cleaning and \$50.00 to change the bedroom door locking handle were undisputed. Accordingly, I award the Landlord **\$95.00** carpet cleaning and **\$50.00** for the door handle change.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The tenancy agreement Section 16 ***Tenant's Covenants*** subsection (17) of the tenancy agreement states: *Not to make any alterations, extensions, additions or improvements including painting of walls, wallpaper, etc. to the Premises.*

Based on the aforementioned I find the Tenant has breached the tenancy agreement section 16 and sections 32(3) and 37(2) of the Act by leaving the rental unit altered after painting it without the Landlord's permission. Accordingly, I award the Landlord painting costs of **\$348.54**.

The Tenant did not dispute taking the remote; however, she would like to return it to the Landlord to reduce the amount owed. Accordingly, I award the Landlord the right to retain the **\$50.00** remote deposit in the event the remote is not returned in working condition. If the remote is returned in working order the Tenant may reduce the amount of the award by \$50.00.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Carpet Cleaning	\$ 95.00
Pass handle/lock changed in bedroom	50.00
Painting second coat to cover colored walls	348.54
Remote not returned	50.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$593.54
LESS: Remote Deposit	-50.00
LESS: Security Deposit \$407.50 + Interest \$12.96	<u>-420.46</u>
Offset amount due to the Landlord	<u>\$ 123.08</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$123.08**. This Order is legally binding and must be served upon the Tenant.

If the Landlord receives the remote in working order the award will be reduced by \$50.00.

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 03, 2013

Residential Tenancy Branch

