



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD and FF

Introduction

This hearing was convened in response to cross applications.

On June 24, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

On My 27, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent or utilities; a monetary Order for money owed or compensation for damage or loss; to retain the security deposit; and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or unpaid utilities, and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 30, 2012; that it ended on April 30, 2013; that the Tenant paid a security deposit of \$700.00; that on May 23, 2013 the Tenant provided the Landlord with a forwarding address, in writing; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Landlord did not return any portion of the security deposit.

The Tenant stated that he also provided his forwarding address to an agent for the Landlord on May 16, 2013, via text message. The Landlord stated he is not aware of the address being provided on May 16, 2013.

The Landlord is seeking compensation for repainting the rental unit. The Landlord stated that the Tenant made several holes in the wall for the purposes of hanging paintings; that the Tenant did a poor job of repairing the holes; and that the Tenant painted over the repairs with the incorrect colour of paint.

The Witness for the Tenant, who is the Tenant's father, stated that he properly repaired several small holes in the walls; that the Tenant purchased paint; that he applied the paint to the walls, which at the time of application appeared to be the same colour; and that when the paint dried there was a slight difference in colour.

The Tenant stated that his father repaired small holes in the walls that occurred during his tenancy; that an agent for the Landlord by the name of "Jason" told him the colour of paint to purchase; that he purchased paint of that colour; that when the paint was applied it appeared to be the correct colour; and that when the paint dried there was a slight difference in colour.

The Landlord produced no evidence to refute the testimony that "Jason" told the Tenant what colour of paint to use.

The Landlord and the Tenant agree that the rental unit was inspected at the end of the tenancy by "Jason" and the Tenant. The Tenant stated that Jason completed a report at the time of the inspection but he did not show it to the Tenant and he did not ask him to sign it. He stated he did not see a copy of the report until it was provided to him as evidence for these proceedings.

The Landlord stated that "Jason" told him that the Tenant refused to sign the report. He agrees that the report was first provided to the Tenant, by mail, on May 27, 2013.

The Landlord submitted a copy of the report that was completed at the end of the tenancy. I note that this is not the standard condition inspection report that is provided by the Residential Tenancy Branch. Although there are many differences between this report and the standard condition inspection report, I specifically note that there is nowhere on this report to sign if a tenant disagrees with the content of the report. The

only space available for the tenant to sign on this report indicates that “the condition of this suite is recorded accurately above”.

The Tenant submitted photographs of the walls in the rental unit. The walls appear to be in very good condition although there are a few small patches which appear to be a slightly different colour.

The Landlord is seeking \$102.87 for hydro costs. The Tenant does not dispute that this amount is owed and he agreed that the Landlord could retain this amount from his security deposit.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was obligated to repair and repaint the walls.

I find that the Landlord has submitted insufficient evidence to corroborate his claim that the repairs made to the walls, with the exception of the painting, were inadequate or to refute the Witness for the Tenant’s claim that the repairs, with the exception of the paint, were completed properly. I find that the photographs that were submitted in evidence by the Tenant corroborate the testimony that the repairs were adequate, with the exception of the paint.

On the basis of the undisputed evidence, I find that the repairs to the small holes were painted with a paint that is a different hue than the rest of the walls. On the basis of the photographs submitted in evidence by the Tenant, I find that the problem could have been easily remedied by applying a small amount of paint the correct colour. I therefore find that the Landlord has failed to establish that the entire rental unit needed to be repainted as a result of the repair.

Residential Tenancy Branch Policy Guidelines suggest that a tenant who makes holes in the walls for the purpose of hanging pictures/mirrors/wall hangings/ceiling hooks are not obligated to repair the holes. I concur with this policy. In the absence of evidence that shows these repairs have created significantly greater damage than the damage caused by the nail holes, I find that I cannot conclude that the Landlord is entitled to compensation for painting the unit. I therefore dismiss the claim for painting the rental unit.

As the Tenant agreed that the Landlord can retain \$102.87 from his security deposit of

for hydro costs, I find that the Landlord is entitled to retain this amount.

I find that the Applications for Dispute Resolution filed by both parties have some merit. I therefore find that each party is responsible for the cost of filing their own Application.

Conclusion

As the Landlord has only established that he can retain \$102.87 from the security deposit, he must return the remaining \$597.13 and I grant the Tenant a monetary Order in that amount. In the event that the Landlord does not voluntarily 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.

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: August 29, 2013

Residential Tenancy Branch

