



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed June 5, 2013: MND; FF

Tenant's application filed August 26, 2013: MNSD; O; FF

Introduction

This Hearing was scheduled to consider cross applications. The Landlord seeks a monetary award for damages; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks a monetary award in the equivalent of double the amount of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he served the Tenant with his Notice of Hearing documents and copies of his documentary evidence by registered mail, but he was not certain of the date. The Tenant acknowledged receipt of the documents.

The Tenant testified that she served the Landlord with her Notice of Hearing documents and documentary evidence by registered mail sent August 26, 2013. The Landlord acknowledged receipt of the documents.

Issues to be Decided

- Is the Tenant entitled to a monetary award in the equivalent of double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Landlord entitled to a monetary award for damage to the walls of the rental unit?

Background and Evidence

The Landlord testified that there is a written tenancy agreement between the parties. The Tenant stated that she does not remember signing a tenancy agreement, but she

might have. She stated that the Landlord did not give her a copy, if one was signed. In any event the parties agree on the following facts:

- The tenancy started on January 20, 2011;
- The tenancy ended on May 31, 2013;
- The Tenant paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

The Landlord stated that there was no Condition Inspection Report completed at the beginning or at the end of the tenancy. The Tenant disagreed. She stated that there was a condition inspection performed at the beginning of the tenancy and a report was completed which was numerous pages and included a check list which covered everything. She testified that she was not given a copy of the Report.

The Landlord testified that the Tenant damaged the walls in the rental unit by hanging "10 or 15 or 20" pictures on the wall. He stated that the Tenant attempted to spackle the holes, but did a poor job, which required more repair and painting. The Landlord stated that the rental unit was freshly painted when the Tenant moved in, but he did not have any left-over paint for touch ups and had to paint the walls in the bathroom, kitchen and bedroom. The Landlord seeks a monetary award in the amount of **\$393.75**. The Landlord provided photographs and a copy of the painter's invoice in evidence.

The Tenant submitted that the rental unit is in a building that was constructed in the mid 1950s and that the drywall was very old and crumbled when she was hanging a picture. She stated that the Landlord did not provide her with special instructions with respect to hanging pictures. The Tenant stated that a friend who is an expert at hanging pictures helped her to hang them and used a stud finder. She stated that the Landlord was invited to see the pictures when they were hung and that he took no issue with them. The Tenant stated that there was a crack in the bathroom wall when she moved in and that she specifically remembers making a note of it on the Condition Inspection Report at the beginning of the tenancy.

The Tenant's witness AS is the Tenant's friend and the person who helped her to hang the pictures. AS stated that he is a certified picture framer and does home renovations. AS testified that the rental unit was spotless and freshly painted when the Tenant moved in. He said that he was careful to not put any weight on the drywall by using a stud finder to hang the pictures. When the Tenant was ready to move out, AS brought his tools and equipment, removed the pictures and spackled the holes with drydex. AS testified that he sanded the spackling and left the walls ready for paint. AS testified that the Tenant showed him the photographs from the Landlord and that he was surprised because someone had put uneven gobs of spackle on top of his work. The Landlord

asked AS if the wall was crumbling and he answered that it was and that he had to be very careful.

The Landlord agreed that the rental property was built in the 1950's. He stated that he did not ask the Tenant to fill in any holes at the end of the tenancy. The Landlord submitted that he could not find a paint match and could not leave the walls with white patches, so he had to repaint the three rooms.

The Tenant testified that she provided the Landlord with her forwarding address on her notice to end tenancy dated April 30, 2013. She said that the Landlord asked for it again because he could not find it, so she provided it again on May 31, 2013.

The Tenant seeks a monetary award in the equivalent of double the security deposit, **\$1,100.00**, pursuant to the provisions of Section 38(6) of the Act.

Analysis

Each party has the responsibility of proving their claims on the civil standard, the balance of probabilities.

Regarding the Tenants' Application:

The security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (whichever date shall last occur), a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that a landlord cannot claim against the security deposit **and must pay double** the amount to the tenant if the landlord does not comply with Section 38(1) of the Act.

In this case, the Landlord filed his Application for Dispute Resolution on June 5, 2013, which is within 15 days of the end of the tenancy. However, Section 36 of the Act provides that a landlord's right to claim against the security deposit for damages is extinguished if the landlord does not complete a Condition Inspection Report at the end of the tenancy and provide the tenant with a copy. In any event, the Landlord did not

claim against the security deposit in his Application for Dispute Resolution. Therefore, I find that the Tenant is entitled to a monetary award in the amount of **\$1,100.00** pursuant to the provisions of Section 38(6) of the Act.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Regarding the Landlord's Application:

Although the Landlord extinguished his right to claim against the security deposit, he still retains the right under Section 67 of the Act to make an application for compensation for damage or loss.

A Condition Inspection Report is evidence of the condition and repair of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The onus is on the Landlord to provide sufficient evidence to prove that the Tenants caused the damages for which the Landlord seeks compensation. I find that the Landlord did not provide sufficient evidence to prove that the Tenant caused the damage to the bathroom wall.

Residential Tenancy Policy Guideline 1 provides that most tenants will put up pictures in their rental unit and that if the tenant follows the Landlord's reasonable instructions for hanging and removing them, it is not considered damage and the tenant is not responsible for filling the holes or the cost of filling the holes. In this case the Landlord did not dispute the Tenant's testimony that no instructions were given with respect to hanging and removing pictures.

Residential Tenancy Policy Guideline 1 provides that gypsum board or drywall has a useful life of 20 years. In this case, the walls were the original walls from the date of construction and were almost 60 years old. I find it probable that the walls would crumble due to age.

For these reasons given above, I dismiss the Landlord's application.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,150.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 24, 2013

Residential Tenancy Branch

