



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 Hearing was convened to consider the Landlord's Application for Dispute Resolution seeking a monetary award for damages; to retain a portion of the security deposit in satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenant with her Notice of Hearing documents by registered mail on September 10, 2013.

It was also determined that the parties exchanged copies of their documentary evidence.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for damage to the rental unit?
2. Is the Landlord entitled to retain a portion of the security deposit?

Background and Evidence

This tenancy began on February 29, 2012 and ended on August 31, 2013. Monthly rent was \$1,450.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 at the beginning of the tenancy. The Landlord is holding the security deposit.

A condition inspection was completed by both parties at the beginning of the tenancy, but not at the end of the tenancy. A copy of the move-in Condition Inspection Report was provided in evidence.

The Landlord gave the following testimony:

The Landlord testified that the living room ceiling was painted 2 days before the Tenant moved in. She stated that the Tenants left two small holes in the ceiling which have to be repaired.

The Landlord stated that the Tenant attached a sticker to the front door, which the Tenant did not remove when she moved out. The Landlord testified that removing the sticker also removed the paint underneath the sticker, so she had to purchase custom made paint to match the door.

The Landlord testified that the Tenant did not replace burned out light bulbs in the rental unit and did not return the FOB, the door key or the mail box key.

The Landlord stated that the Tenant damaged the bathroom door, which had to be replaced.

The Landlord testified that the Tenant pulled the blinds away from the wall, causing damage to the wall. She stated that at the end of the tenancy, the Tenants left a closet door off the rails, which had to be re-installed.

The Landlord did not provide a detailed monetary calculation with her documentary evidence; however, she did provide the move-in condition inspection report, copies of invoices and photographs in support of her Application. The Landlord stated that she seeks compensation for the damages, as follows:

Labour to make the repairs (5 hours @\$25.00)	\$125.00
Cost to replace damaged bathroom door	\$119.84
Cost to replace missing FOB	\$20.00
Paint for damaged front door (including \$.25 eco fee)	\$18.24
Cost of new door key	\$4.20
Cost of new mail box key	\$5.05
Cost to replace burned out light bulbs	<u>\$23.77</u>
TOTAL CLAIM	\$315.85

The Landlord also claimed for the cost of replacing a faucet; however, she stated that she was withdrawing that portion of her claim.

The Tenant and the co-tenant (the "Tenants") gave the following testimony:

The Tenants stated that initially the Landlord returned the security deposit in full at the

end of the tenancy, but that she became upset when she opened some mail that had come for her to the rental unit. The Tenants stated that the Landlord took the cheque out of the female Tenant's hand and said she would have to think about how to proceed.

The Tenants agreed that they owed the Landlord for the cost of replacing the FOB and the keys.

The Tenants submitted that the closet door was off its track when they moved in and that it was indicated as such on the condition inspection report.

The Tenants stated that paint on the bathroom door was only slightly cracked and that it was a result of the bathroom fan not working. The Tenants stated that they fixed the fan themselves.

The Tenants testified that the blinds were installed without proper wall anchors and that the supports were not drilled directly into the wall studs.

The Tenants stated that there were burned out light bulbs in the rental unit at the beginning of the tenancy.

The Tenants submitted that the two small holes in the ceiling were there when they moved in, and were from a former light fixture that was mounted to the ceiling. The Tenants provided photographs depicting a "stock" lighting fixture in a similar unit. The Tenants stated that when the ceiling was painted prior to the beginning of the tenancy, the painters painted over the anchors rather than removing them.

The Tenants did not dispute that they attached a sticker to the front door. They stated that they did not try to remove it at the end of the tenancy.

The Landlord gave the following reply:

The Landlord testified that her income tax return had gone to the rental unit and that the Tenant kept it for more than a year.

The Landlord stated that the Tenant did not advise her of any repairs during the tenancy (for example, the bathroom fan). She stated that all of the light bulbs were working at the beginning of the tenancy. She also disputed that the blinds were installed incorrectly.

The Landlord submitted that it didn't make sense that a professional painter would paint over plastic anchors instead of preparing the ceiling properly before painting.

Analysis

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant did not dispute the Landlord's claim for the cost of replacing the FOB or the keys, and therefore this portion of her claim is allowed.

I find that the Tenants are responsible for the damage left by removing the sticker. Therefore I allow the Landlord's claim for the cost of custom paint.

Residential Tenancy Branch Guideline 1 provides that landlords are required to ensure that all light bulbs are working when a tenant moves in and that tenants are required to replace burned out light bulbs during the tenancy. If the light bulbs were burned out before the Tenant moved in, she should have advised the Landlord so that they could be replaced. In addition, there is no mention of burned out bulbs on the move in Condition Inspection Report. Therefore I allow this portion of the Landlord's claim.

The Tenants stated that there were “minor cracks” in the paint on the bathroom door and submitted that it did not require replacement. I find that the Landlord did not provide sufficient evidence that the bathroom door had to be replaced and that it could not have been repaired. Therefore, I find that the Landlord has not met part 3 of the test for damages and this portion of her claim is dismissed.

I accept the Tenant’s submission that the closet door was off its rail at the beginning of the tenancy, pursuant to the Condition Inspection Report. I have dismissed the Landlord’s claim for the cost of replacing the bathroom door. Based on the Tenant’s photographs of the small holes in the ceiling, I find it probable that the anchors were there before the tenancy started and painted over when the ceiling was painted. Therefore I find that Tenant is not responsible for the holes. I find that the Landlord did not provide sufficient evidence that the Tenant is responsible for the damage to the wall from the blind brackets.

The Landlord provided an invoice for 5 hours of work at the rental unit on September 8, 2013. There is no breakdown with respect to how long each of the repairs took to complete and I have dismissed some of the Landlord’s claims. However, I am satisfied that the Tenant is responsible for the damage to the front door as a result of affixing the sticker. Therefore, I allow a nominal award for labour in the amount of \$25.00 for this portion of her claim.

The Landlord has established a monetary award, calculated as follows:

Labour (nominal award)	\$25.00
Cost to replace missing FOB	\$20.00
Cost to replace missing keys	\$9.25
Cost to replace burned out bulbs	<u>\$23.77</u>
TOTAL AWARD	\$78.02

The Landlord’s application had some merit and therefore I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

I find that the Landlord has extinguished her right to claim against the security deposit for damages; however, Section 72 of the Act allows me to set off the Landlord’s monetary award against the security deposit.

Therefore, I hereby provide the Tenant with a Monetary Award in the amount of **\$571.98**, representing return of the balance of the security deposit after setting off the Landlord’s monetary award.

Conclusion

I find that the Landlord is entitled to a monetary award for damages in the amount of \$78.02 and that the Landlord is entitled to recover the cost of the \$50.00 filing fee, for a total amount of **\$128.02**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$571.98** for service upon the Landlord, representing the balance of the security deposit after setting off the Landlord's monetary award. This Monetary 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: January 06, 2014

Residential Tenancy Branch

