



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on July 01, 2012. Monthly rent of \$1,850.00 was due and payable in advance on the first day of each month, and a security deposit of \$925.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Following notice given by the tenant on March 04, 2014, tenancy ended effective April 30, 2014. A move-out condition inspection report was completed with the participation of both parties, and the tenant provided his forwarding address on the report.

Subsequently, the landlord filed an application for dispute resolution on May 14, 2014, which was thereafter amended on September 10, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

The attention of the parties is drawn to section 32 of the Act which addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32 (3) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Further, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37 (2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Based on the documentary evidence and testimony, the various aspects of the landlord's claim and my related findings are set out below.

\$1,732.50:

Repainting interior walls in entire unit, including closets & repairing / painting kitchen cabinets

The landlord's agents testified that repainting was required, in part, as a result of the tenant's use of a gloss paint on portions of various walls which had previously been painted with a flat paint. The landlord's agents also testified that the unit was constructed in 2008 and that as far as they knew, the original interior paint had not previously been repainted since that time.

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of interior paint is 4 years. I find that the interior paint was approximately 5 to 6 years old when this tenancy ended. Accordingly, I find that the interior paint had exceeded its useful life.

Further, I note that the move-in condition inspection report documents that the kitchen "Cabinets, Counters, Closets, Cupboards" showed "normal wear and tear." Clearly, the addition of approximately 2 more years of tenancy enhanced the effects of normal wear and tear.

Following from all of the foregoing, I find that the landlord has failed to meet the burden of proving entitlement to this aspect of the application, and it is therefore dismissed.

\$93.45:

Labour to "cut two holes in the wall behind the toilet to make sure all water lines are holding."

I note that the plumber's invoice includes the following narrative:

Water damage on the baseboard has been caused by standing water throughout the bathroom. The base of the cabinet also has water damage, showing evidence that water has spread quite far in the bathroom.

I find that costs arising from the plumber's use of discretion in cutting holes in the wall in order to further his investigation, ought not to be borne by the tenant. This aspect of the application is therefore dismissed.

\$575.40:

Repairs to garburetor and cracked pipe located beneath sink

Even while there is no dispute that a garburetor is actually located in the unit, the written tenancy agreement does not document that a garburetor is even provided in the unit. Further, there is no specific mention of the condition of the garburetor on the move-in condition inspection report, and the tenant claims he never used the garburetor. I find on a balance of probabilities that the tenant and / or a person permitted in the unit by the tenant did have occasion to use the garburetor, and that this use likely contributed to the need for repairs. However, in view of the other observations made here I find that the landlord has established entitlement limited to **\$100.00**.

\$315.00:

Labour related to modification of existing bifold doors, anchoring of "U" channel tracks for bifold doors, shim/modification of "U" channel tracks for bifold doors

I am unable to find any documentation related to the condition of the bifold doors on either the move-in or move-out condition inspection reports. I find that the labour described above was required as a result of normal wear and tear arising before this tenancy began, and during the term of this tenancy. Accordingly, this aspect of the claim is hereby dismissed.

\$258.25:

Repairs to kitchen cabinet door, hole behind toilet, water stains on living room ceiling, re-attached dryer vent and replaced toilet handle

\$205.37:

“Found lint filter broken & plugged up solid and venting broken. Replaced filter & vacuumed cabinet & blower housing.”

\$61.00:

Labour, time, travel, mileage, admin. arising from job to “Repair Towel Bar”

I find that the degree of detail set out on the move-in and move-out condition inspection reports is insufficient to provide conclusive “before and after” comparative results related to the 3 specific aspects of the claim set out immediately above. Further, I note there is an abundance of normal wear and tear within the unit documented on the move-in condition inspection report at the time when tenancy began. In the result, these aspects of the application are hereby dismissed.

\$11.34:

Costs for mailing

Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party. Accordingly, this aspect of the application is dismissed.

\$228.90:

Replacement of bedroom blinds

The landlord’s agents testified that damage to bedroom blinds which is considered to be in excess of normal wear and tear was not discovered by the landlord during the move-out condition inspection. Rather, the tenant who took possession of the unit following the end of this tenancy discovered the damage and reported it to the landlord. Accordingly, no mention of this damage appears on the move-out condition inspection report. I also note there is no evidence before me in relation to the age of the blinds.

I find that as this damage was not documented while both parties undertook the move-out condition inspection together, and in view of the effects of normal wear and tear on the blinds over an unknown period of time, this aspect of the application must be dismissed.

\$50.00:

Filing fee

As the landlord has achieved only very nominal success with this application, I find that the landlord has established entitlement to recovery of **\$25.00**, or half the full filing fee.

Total: \$125.00

I order that the landlord withhold **\$125.00** from the security deposit of **\$925.00**, and I order the landlord to repay the balance to the tenant in the amount of **\$800.00** (\$925.00 - \$125.00).

Conclusion

The landlord is hereby ordered that he may withhold **\$125.00** from the tenant's original security deposit of \$925.00.

The landlord is hereby ordered to repay the balance of **\$800.00** of the tenant's original security deposit of \$925.00 to the tenant.

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 25, 2014

Residential Tenancy Branch

