



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The male and female tenant did not attend this hearing, which lasted approximately 52 minutes. The landlord's agent, GM ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the building manager for the landlord company named in this application and that she had authority to represent the landlord company as an agent at this hearing.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package ("Application") on September 12, 2014, by way of registered mail to the forwarding address provided by the tenants. The landlord provided a copy of two Canada Post receipts and tracking numbers with its Application. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's Application on September 17, 2014, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on April 1, 2013 and ended on August 31, 2014. Monthly rent in the amount of \$1,050.00 was payable on the first day of each month. A security deposit of \$525.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with its Application. The landlord testified that the tenants provided a forwarding address in writing on September 1, 2014. The landlord confirmed that there is no unpaid rent owing for this tenancy.

The landlord provided a copy of the move-in condition inspection report, which was signed by the female tenant. The landlord stated that both parties agreed by way of a telephone conversation, to conduct a move-out inspection on August 31, 2014 at 1:00 p.m. when the tenants were vacating the rental unit. The landlord indicated that when the landlord arrived to complete the move-out inspection, the tenants were not finished cleaning the rental unit and indicated they would telephone the landlord when they were finished. The landlord stated that the tenants did not contact the landlord to reschedule the move-out inspection. The landlord testified that the tenants' written forwarding address along with the rental unit keys were found by the landlord in the rental unit on September 1, 2014. The landlord indicated that on September 1, 2014, attempts were made to contact the tenants but their telephone number was disconnected. The landlord stated that she left a written note in the rental unit, where some of the tenants' belongings had been left behind, in order to reschedule the move-out inspection. The landlord confirmed that no attempt was made to contact the tenants at their forwarding address.

The landlord indicated that a move-out condition inspection occurred on September 3 or 4, 2014, but she could not recall the exact date. The landlord provided a copy of the move-out condition inspection report, which she said was sent to the tenants with the landlord's Application. The report indicates damage and repainting in the rental unit, after the tenants vacated. The report states that the last electrical bill is owing, and indicates cost amounts for cleaning as well as painting the walls and kitchen cabinets.

The landlord stated that the tenants advised that the landlord could keep their security deposit but that the tenants would not be paying any additional amounts to the landlord. The landlord provided a copy of a note, which she says was written by the male tenant to the landlord, indicating that *"if, and I laugh at this, you should have any of our damage deposit left over, send it to [tenants' forwarding address]."*

The landlord seeks a monetary order of \$584.32 plus the \$50.00 filing fee. The landlord seeks \$337.50 for repainting the walls, \$100.00 for repainting the kitchen cabinets, \$120.00 for cleaning and \$26.80 for unpaid utilities at the rental unit.

The landlord seeks \$337.50 for repainting the walls and \$100.00 for repainting the kitchen cabinets in the rental unit, costs that are also indicated on the move-out condition inspection report. The landlord stated that after the tenants vacated, the walls and cabinets had to be repainted back to the landlord's original and approved colours because the tenants painted it with unapproved colours. The landlord pointed to clause 17 of the tenancy agreement, which states that the tenants must obtain prior written consent to paint the rental unit with authorized landlord colours. The landlord stated that the tenants did not obtain the landlord's permission to paint in the rental unit and they used blue, red and green on the walls and yellow on the kitchen cabinets. The landlord provided coloured photographs of these areas. The landlord stated that the landlord's approved colours were beige for the walls and white for the kitchen cabinets. The landlord indicated that the tenants were told verbally in July 2014 that they had to repaint the rental unit back to the landlord's approved colours before vacating. The landlord stated that the tenants were provided with a letter, dated August 20, 2014, indicating that the tenants painted the interior walls a different colour than when they originally moved in and that prior to the move-out condition inspection, the tenants had to ensure the rental unit was painted back to the original colour.

The landlord stated that her husband repainted the walls and cabinets on September 20, 2014. The landlord stated that \$225.00 was the flat rate for one coat of paint for walls of a two bedroom rental unit, such as this one. The landlord indicated that a second coat of paint was \$112.50 and the third coat of paint was free because the tenants resided in the rental unit for longer than one year. The landlord indicated that \$100.00 was the flat rate for repainting the kitchen cabinets. The landlord stated that she forgot to submit invoices for these costs.

The landlord seeks \$120.00 for cleaning the rental unit after the tenants vacated. This cost is also indicated on the move-out condition inspection report. The landlord stated that her husband performed the cleaning of the unit. The landlord indicated that the windows, stove, fridge, floors and bathroom had to be cleaned. The landlord provided coloured photographs to show the dirty state of the rental unit's floors, kitchen and other areas. She indicated that the cost was a flat rate to clean a two bedroom unit for 6 hours of cleaning at \$20.00 per hour. The landlord stated that she usually submits an invoice for cleaning expenses but forgot to do so.

The landlord also seeks \$26.82 for utilities, which she says were unpaid by the tenants at the end of this tenancy. The landlord stated that the absence of the electricity cost in the tenancy agreement implies that the tenants are personally responsible for this cost. The landlord stated that she has the electricity bill but she did not provide a copy for this hearing. The move-out condition inspection report indicates “last electrical bill” with no cost attached to this item.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. However, the landlord failed to provide any receipts or invoices to show any amounts owing for utilities or to indicate painting and cleaning were done. The landlord submitted a copy of a security deposit report, deducting amounts from the deposit for cleaning, painting the walls and kitchen cupboards and a charge from the City. The report states that the tenants owe their entire \$525.00 security deposit and an additional \$59.32 to the landlord to cover these costs.

I find that the landlord provided undisputed evidence that the tenants failed to sufficiently clean the rental unit when they vacated. The landlord provided photographs showing the dirty state of the rental unit. The landlord indicated a cleaning fee of \$120.00 on the move-out condition inspection report and the security deposit statement. Although the landlord did not submit any invoices or receipts to confirm the amount paid for the cleaning, I am satisfied that the landlord is entitled to a nominal award for this cost. I make this finding because the tenants are required to keep the rental unit in a state of “reasonable health, cleanliness, and sanitary standards,” as per section 32(2) of the *Act*. The tenants can be found to be responsible for cleaning costs at the end of the tenancy, where the rental unit is left in a condition that does not comply with these standards, as per Residential Tenancy Policy Guideline 1. Accordingly, I find that the landlord is entitled to a total of \$60.00 for three hours of cleaning at a rate of \$20.00 per hour. I find that this is a reasonable amount for cleaning that the tenants failed to perform at the end of this tenancy.

The landlord failed to provide sufficient evidence that the tenants painted the rental unit walls and kitchen cupboards a different colour than the landlord’s approved colours. Although the tenancy agreement refers to the tenants requiring permission prior to painting the rental unit with the landlord’s approved colours, no specific colours are referenced in the agreement or the letter from the landlord to the tenants on August 20, 2014. Most importantly, the landlord failed to provide invoices or receipts for the painting, totalling \$437.50. Accordingly, I find that the landlord is not entitled to \$437.50 for the painting of the walls or kitchen cupboards in the rental unit.

The landlord failed to provide sufficient evidence that utilities are owing for this tenancy. The landlord did not provide a utilities bill from the City in the amount of \$26.82, which she says is the cost of the utilities owing by the tenants. The landlord did not include the cost of the utilities bill in the move-out condition inspection report. The landlord just indicated "last electrical bill" on the report. Accordingly, I find that the landlord is not entitled to \$26.82 for the cost of utilities from the tenants.

As the landlord was mainly unsuccessful in this Application, I find that the landlord is not entitled to recover the \$50.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$60.00 from the tenants' security deposit in full satisfaction of the monetary award. No interest is payable over this period.

Conclusion

In order to implement this decision, I order the landlord to retain \$60.00 from the tenants' security deposit and to return the remainder of the tenants' security deposit in the amount of \$465.00 to the tenants.

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 22, 2015

Residential Tenancy Branch

