



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding L. & M. Marketing (2006) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was a hearing with respect to an application by the landlord for a monetary order and for an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord's representative and the named tenant called in and participated in the hearing. The tenant filed his own application for dispute resolution on September 4, 2015 to claim the return of the security deposit including payment of double the amount. The tenant's application was not scheduled to be heard as a cross application, instead it was set for hearing by conference call on March 8, 2016. With the approval of the parties I have heard evidence with respect to both applications and the tenant's application has been joined and heard as a cross application along with the landlord's application. The hearing set for March 8, 2016 at 2:00 P.M. by conference call will be cancelled.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the security deposit?
Are the tenants entitled to the return of the deposit, including double the amount?

Background and Evidence

The rental unit is an apartment in Kelowna. The tenancy began in March, 2011. The monthly rent was \$1,000.00 and the tenants paid a \$500.00 security deposit at the start of the tenancy.

The landlord's representative testified that the tenants moved out at the end of January, pursuant to a two month Notice to End Tenancy for landlord's use. The landlord's representative said the tenants were given two months free rent at the end of the tenancy rather than the usual one month. In the application for dispute resolution the landlord claimed payment of the sum of \$1,257.85. According to the landlord's documents the amount claimed included the following:

- Charge to remove abandoned furniture and take to dump: \$80.00

• Charge to fill nail and screw holes in bedroom and living room beam, paint bedroom and paint beam:	\$200.00
• Charge to re-glaze bathtub:	\$472.50
• Bills for repair and replacement of appliances:	\$505.35
Total:	\$1,257.85

At the hearing the landlord's representative said that he was acting for the landlord on the instructions of the owner of the corporate landlord. He said that the landlord wished to retain the \$500.00 security deposit in full and final satisfaction of the landlord's claims. He said that the landlord has taken this position in part because it provided the tenants with an additional month's free rent over and above the one month required by the *Residential Tenancy Act*.

The landlord did not provide a condition inspection report to show the condition of the rental unit when the tenancy began and he did not submit a move-out inspection report. The landlord did not submit any photographs of the rental unit in support of its claim.

The landlord's representative testified that the landlord's claims for removing furniture as well as for fixing nail holes and painting were justified. He said that the other invoices for bathtub re-glazing and appliance repairs were not items that he considered were the tenants' responsibility.

The tenant testified that the landlord served a Notice to End Tenancy claiming that the tenants need to move out so the landlord could renovate. He said that he disputed the notice because the real reason for the notice was because the landlord intended to spruce up the property and sell it. He said that he considered the landlord's claim to be vindictive because the landlord was upset at having to provide an extra month's free rent in order to get the tenants to agree to move.

The tenant said that he did not expect to receive the full amount of his security deposit as a refund. He acknowledged that he left some furniture behind that had to be removed and acknowledged that there were holes that needed to be patched and repaired, but he said that he did not think it was appropriate that he pay for painting because the unit was not freshly painted when the tenancy started; after a four year tenancy it would need to be painted at the end of the tenancy due to normal wear and tear. The tenant felt that the sum of \$200.00 would be a proper amount to cover the cost of furniture removal and the repairs and patching, leaving out the charge for painting.

Analysis

The landlord has the obligation of proving that it is entitled to compensation from the tenants for damage, repairs or cleaning that exceed normal wear and tear. The proof that is expected includes copies of both move-in and move-out condition inspection

reports and photographs to show the nature and the extent of damage or repairs that are needed. The landlord submitted some invoices, but no other documentary or photographic evidence. The tenant submitted his own statements and provided convincing reasons why the costs for the bathtub re-glazing and appliance repairs were not his responsibility. The landlord's representative did disagree with the tenant's evidence and I accept that the tenants are not responsible for those claims. I find, based on the tenant's acknowledgement at the hearing, that he left some furniture behind and caused some damage to the bedroom and to a beam that required filling and patching. I find that the tenant is not responsible for any part of the cost of painting. I consider painting to be an expected cost to be borne by the landlord after a tenancy of four years.

I allow the landlord's claim for the cost of removing cast off furniture and for patching and repairs in the total amount of \$200.00. All other claims by the landlord are dismissed without leave to reapply. The landlord has been largely unsuccessful and I decline to award the recovery of the landlord's filing fee for its application.

With respect to the tenant's application, I find that he is entitled to the return of the balance of his security deposit in the amount of \$300.00, but not to an award of double the amount of the deposit because he has not shown that he gave the landlord his forwarding address in writing more than 15 days before the landlord commenced its application to claim the deposit and this is a prerequisite to the granting of an award of double the amount of the deposit. I find that the tenant is entitled to recover the \$50.00 filing fee for his application for a total award of \$350.00.

Conclusion

The tenants have been awarded the sum of \$350.00 and I grant them an order under section 67 in the said amount. This order may be registered in the 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: September 18, 2015

Residential Tenancy Branch

