



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prudential Kelowna Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the hearing. The parties provided evidentiary material in advance of the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on July 1, 2013, was renewed and reverted to a month-to-month tenancy after December 31, 2014. The tenancy ultimately ended on September 30, 2015. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet

damage deposit was collected. The rental unit is a condominium suite within a complex, and a copy of the latest tenancy agreement has been provided.

A move-in condition inspection report was completed at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy using the same form. A copy has been provided.

The Landlord's Application for Dispute Resolution seeks monetary compensation in the amount of \$750.00, and the landlord's agent testified that at the time the application was made, the amount was unknown, so the entire security deposit amount was claimed.

The landlord's agent further testified that the rental unit was not left reasonably clean at the end of the tenancy and has provided photographs. The landlord's agent testified that a receipt for cleaning in the amount of \$189.00 has been provided, which the landlord claims against the tenant. However, a copy is not in the landlord's evidence package. I have made a diligent search of the evidentiary material and the only receipt located for cleaning is a receipt dated July 9, 2013 for cleaning services for 4 hours of cleaning the kitchen, 2 full bathrooms, tile grout and flooring for \$100.00. The landlord's agent testified that the receipt is for services the landlord paid for cleaning at the beginning of the tenancy, albeit 9 days after the tenancy began.

The landlord also claims \$211.20 for painting 2 walls where the tenant had hung TV mounts. A receipt dated September 19, 2015 has also been provided, as well as a receipt dated July 10, 2013 to establish that the walls had been newly painted at the beginning of the tenancy. Someone has written beside the latter receipt, "As per move in condition report; hallway trim was painted; 2nd bedroom was painted."

The landlord also claims the cost of photographs, parking and for mailing documents and evidence, as well as recovery of the \$50.00 filing fee.

The tenant testified that at move-in the rental unit was disgustingly dirty as left by the previous tenant. The tenant was shocked at the condition, and lived in the rental unit for days in that condition. The landlord hired someone to clean the kitchen only and paid \$100.00. The tenant had to clean the rest of the rental unit.

The tenant further pointed out that the move-in condition inspection report shows that every room was dirty at the beginning of the tenancy, and walls were already scuffed. The receipt the landlord has provided for painting from the beginning of the tenancy was only the hallway and second bedroom. The master bedroom had not been painted at all, which is now one wall claimed by the landlord. The entire rental unit at the beginning of the tenancy was the original paint from when the unit was built. The tenant agrees that there were small screw holes left in 2 walls from TV mounts, however the

tenant paid \$200.00 to have the holes filled, plastered, and sanded. A copy of the receipt has been provided by the tenant, which is dated September 29, 2015. The tenant had rented a different unit from the same landlord previously and was yelled at for painting, so the tenant didn't paint. Further, the wall colors are the originals from when the unit was built, and the tenant isn't even certain if the colors for those 2 walls could be matched.

The tenant has also provided photographs which were taken at the end of the tenancy, and testified that anything in the rental unit claimed by the landlord is normal wear and tear.

Analysis

The *Residential Tenancy Act* requires a tenant to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. The *Act* also states that a landlord must provide and maintain rental property in a state of decoration and repair that makes it suitable for occupation by a tenant. I have reviewed the move-in/out condition inspection report and it is clear that absolutely everything in every room of the rental unit was dirty at move-in. I accept that the landlord hired a cleaner after the tenancy began, however the landlord claims \$189.00 for cleaning after having only paid \$100.00 at the beginning of the tenancy. I have also reviewed the photographs provided by the parties, and I find that the tenant left the rental unit reasonably clean. The landlord's application for the cost of a cleaner is hereby dismissed.

With respect to painting, the landlord has provided a receipt showing that walls were painted on July 10, 2013, beside which, I assume the landlord's agent wrote a note about hallway trim and 2nd bedroom being painted. Any award for damages must not place the landlord in a better financial situation than the landlord would be if the damage or loss had not occurred. The tenant testified that the 2 walls painted by the landlord are not the same walls that were painted at the beginning of the tenancy. The tenant also testified that the 2 walls damaged were filled and sanded, and contained small screw holes. I have reviewed the evidentiary material of the parties, and I find that the entire rental unit required re-painting at the beginning of the tenancy. In the circumstances, I am not satisfied that any damage or loss that may exist was a result of the tenant's failure to comply with the *Act*.

The *Residential Tenancy Act* provides for recovery of a filing fee where a party has been successful with an application, but does not provide for recovery of service or delivery of documents or for costs to prepare for a hearing. Since the landlord has not

been successful with the application, the landlord is not entitled to recovery of the filing fee.

The tenant's evidentiary material includes a Tenant's Application for Dispute Resolution and a Monetary Order Worksheet setting out specific claims. The *Act* requires a party who makes a claim against another party to file the application for dispute resolution and pay the appropriate filing fee. In this case, the tenant has not done that, and I disregard the Tenant's Application for Dispute Resolution and Monetary Order Worksheet.

However, the landlord currently holds a security deposit in trust in the amount of \$750.00 and the parties agree that the landlord received the tenant's forwarding address in writing on September 30, 2015. Having dismissed the landlord's application I hereby order the landlord to return the security deposit to the tenant in full within 15 days of the date of this Decision. If the landlord fails to do so, the tenant will be at liberty to apply for double. Copies of this Decision are sent to the parties on a rush basis to allow time for the landlord to return the security deposit.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to return the \$750.00 security deposit to the tenant in full within 15 days of the date of this Decision. If the landlord fails to do so, the tenant will be at liberty to apply for double the amount.

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: March 01, 2016

Residential Tenancy Branch