



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGIAN HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to retain all or part of the tenant's security deposit and to recover the cost of the filing fee.

An agent for the landlord (the "agent") and an agent for the tenant (the "tenant agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However; only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested to reduce the landlord's monetary claim from \$3,500.00 to \$2,111.00. The agent's request was granted as I find a reduction in the claim against the tenant does not prejudice the tenant. The amendment was made pursuant to section 64(3) of the *Act*.

Also at the outset of the hearing the tenant confirmed that he received and reviewed the landlord's documentary evidence but was unable to open the digital evidence served by the landlord and had not viewed it as a result. As a result and taking into account the Rules of Procedure and Digital Evidence Policy Guideline 42 the landlord's digital evidence was excluded in full for two reasons. Firstly, the landlord failed to confirm with the tenant that the respondent was able to access the digital evidence as required by Rule 3.10 of the Rules of Procedure. Secondly, the digital evidence submitted to the

Residential Tenancy Branch was a DVD in an envelope and was missing the following required information which reads in Rule 3.10 in part:

“...Digital evidence must be accompanied by a printed description, including:

- a table of contents;
- identification of photographs, such as a logical number system;
- a statement for each digital file describing its contents;
- a time code for the key point in each audio or video recording; and
- a statement as to the significance of each digital file. ...”

[reproduced as written]

Based on the above, the landlord’s digital evidence will not be considered. I note that the agent claimed that photographs were included in the digital evidence which also will not be considered as they were included in the digital evidence and were not printed out by the landlord and submitted separately.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2006 and reverted to a month to month tenancy after May 31, 2007. Originally monthly rent in the amount of \$995.00 was due on the first day of each month and was increased during the tenancy. The parties agreed that the tenant vacated the rental unit on November 30, 2015. The landlord continues to hold the tenant’s security deposit of \$497.50 of which the interest will be calculated later in this Decision.

The landlord’s reduced monetary claimed of \$2,111.00 is actually \$2,110.93 as the landlord rounded up incorrectly which I have corrected as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
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1. Wash curtains	\$50.00
2. Repair and repaint suite	\$745.00
3. Cabinet removal (disconnect plumbing, remove dishwasher, remove countertop)	\$150.00
4. Cabinet purchase	\$695.00
5. Cabinet pickup and assemble	\$200.00
6. Cabinet install, wall mount and cut plumbing holes	\$250.00
7. Install countertop, cut out sink hole, plumbing and caulking	\$200.00
8. Filing fee	\$50.00
9. Lighting (bathroom and kitchen)	\$195.00
10. 2 hour labour to replace to remove existing and install new light fixtures	\$90.00
SUBTOTAL	\$2,625.00
<i>Less landlord's estimate of tenant's security deposit of \$497.50 with \$16.57 in interest</i>	<i>-(514.07)</i>
TOTAL	\$2,110.93

Item 1 Evidence

The agent testified that \$50.00 was assessed against the tenant as a cleaning charge to "wash curtains". The agent referred to a document entitled "Cleaning:" dated October 28, 2015, that reads under the curtains area of the cleaning form in handwriting "cleaning fee \$50.00". While the tenant signed the document it does not indicate whether the tenant is agreeing to the charges listed on the document. The condition inspection report does not indicate that the curtains were dirty under the "Blinds, Curtains, Drapes" section of the condition inspection report. There was no evidence presented that the tenancy agreement included a requirement to wash the curtains.

Item 2 Evidence

The landlord has claimed \$745.00 to repair and repaint the suite. The agent referred to several areas painted by the tenant on the condition inspection report. The agent also referred to a painting invoice dated December 8, 2015 submitted in evidence in the amount of \$745.00. The agent described nail holes, and cable tie downs as part of the damage they repaired after the tenant vacated the rental unit.

Items 3 to 7 Evidence

Items 3 to 7 all relate to the rental unit cabinets and countertop that required repair due to what the agent referred to as the tenant installing her own dishwasher without permission of the landlord. The tenant's agent testified that the tenant did have permission by referring to the incoming condition inspection report which reads in part that the dishwasher is tenant supplied. The agent disputed that the condition inspection report constitutes consent of the landlord to install the dishwasher. The agent referred to an estimate from a popular store that supplies cabinets in the amount of \$695.97. The agent confirmed that none of the work regarding the cabinets or countertops has been completed. The agent also confirmed that new renters now occupy the rental unit and pay a higher monthly rent than the tenant did during her tenancy. The agent did not dispute that a former manager for the landlord assisted the tenant to install the dishwasher and modify the cabinets in a separate contract.

The agent testified that he received most of the amounts the landlord is claiming for verbally over the phone and did not submit written quotes in support of items 3, 5, 6 and 7 described above.

Item 8 Evidence

This portion of the landlord's claim relates to the recovery of the cost of the filing fee which will be dealt with later in this Decision.

Items 9 and 10 Evidence

The agent testified that the tenant installed her own lighting in the kitchen and bathroom and that she did not have the permission of the landlord to install her own lighting. The condition inspection report indicates tenant light fixtures on the incoming portion of the condition inspection report. The tenant's agent stated that he feels the condition inspection supports that the landlord was aware and consented to the tenant installing her own lights in 2006 as it was recorded on the incoming condition inspection report.

The tenant's agent did not agree with any portion of the landlord's claim described above.

Analysis

Based on the documentary evidence, the oral testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 Evidence

I afford no weight to the document dated October 28, 2015 entitled "Cleaning:" as I consider the document to be a letter or directions to the tenant versus an agreement between the parties for costs. I make this finding based on the document failing to include wording that clearly indicates that the tenant is agreeing to the costs listed in the document. In addition, I find the landlord has failed to meet the test for damages or loss and has provided insufficient evidence. The landlord failed to indicate "dirty" on the portion of the condition inspection report (the "report") under the section blinds, curtains

and drapes section of the report. Therefore, this portion of their claim is **dismissed without leave to reapply** due to insufficient evidence.

Item 2 Evidence

The useful lifespan of building elements is listed in Residential Tenancy Branch Policy Guideline 40. Interior paint has a useful lifespan of four years and the tenancy began in June 2006. The tenancy ended in November 2015 which is nine years and five months after the tenancy began. Based on the description of the cable tie downs and nail holes, and the condition inspection report, I find that the interior paint has long since passed its' useful life and that the landlord is entitled to no compensation as a result. Therefore, this portion of the landlord's claim is **dismissed without leave to reapply**, due to insufficient evidence.

Items 3 to 7 Evidence

For items 3 to 7 I have carefully reviewed the incoming condition inspection report and I find that the landlord implied their consent by writing "dishwasher is tenant supplied" on the incoming condition inspection report. In other words, I find it reasonable that the tenant had the right to rely on the ability to install the dishwasher and make changes to the cabinets when the landlord writes on the incoming condition inspection report that the tenant is supplying their own dishwasher. In reaching this finding, I have also considered that the manager assisted the tenant to install the dishwasher and regardless of the work being paid for by a separate contract, the manager was still an agent for the landlord who assisted to install the dishwasher for the tenant in the rental unit. Given the above, **I dismiss items 3 to 7 without leave to reapply** as I find the landlord consented to the work being done and that the tenant had the right to rely on that consent as a result.

Items 9 and 10 Evidence

Consistent with my finding above, I find that the landlord also consented to the tenant installing her own light fixtures as the incoming condition inspection report indicates that the tenant has her own light fixtures which the tenant left for the benefit of the landlord at the end of the tenancy. Given the above, I do not find the tenant has breached the *Act* and **I dismiss** this portion of the landlord's claim **without leave to reapply** due to insufficient evidence.

As the landlord's claim did not have merit I do not grant the landlord the recovery of the cost of the filing fee.

The landlord continues to hold the tenant's security deposit of \$497.50 which has accrued a total amount of interest of \$16.56 for a total security deposit with interest of **\$514.06. I ORDER** the landlord to immediately return the tenant's full security deposit with interest in the amount of \$514.06. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$514.06 which should be served on the landlord if the landlord fails to immediately return the tenant's security deposit as ordered.

Conclusion

The landlord's claim fails.

The landlord has been ordered to immediately return the tenant's full security deposit with interest in the amount of \$514.06. The tenant has been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$514.06. Should the landlord require enforcement of the monetary order, the tenant must first serve the landlord with the monetary order. The 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 final and binding on the parties, unless otherwise provided under the Act, and 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: July 11, 2016

Residential Tenancy Branch