



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application 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 tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants, a Legal Advocate for the tenants and an agent for the landlord (hereafter referred to as the landlord) attended the conference call hearing. The parties were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2015 for a fixed term tenancy due to end on August 31, 2016. The tenants gave written notice to end their tenancy on July 27, 2016 and the tenancy ended on August 31, 2016. Rent for this unit was \$1,550.00 per month due on the first of each month. The tenants paid a security deposit of \$775.00 in November, 2015. Both parties attended the both in and the move out condition inspection and a report was completed and signed by the parties. The tenants provided a forwarding address on August 31, 2016.

The landlord testified that the tenants failed to leave the rental unit reasonable clean at the end of the tenancy. The landlord referred to the condition inspection report which details the condition of the unit when the tenants vacated and which documents the areas that required cleaning. The landlord also referred to the invoice from the cleaner who has documented all areas that were cleaned. The landlord seeks to recover \$180.00 for the costs incurred to clean the unit.

The landlord testified that the tenants caused damage to areas of the unit which were not repaired at the end of the tenancy. The landlord again referred to the condition inspection report which shows the unit was brand new at the start of the tenancy and documents the damage done during the tenancy. The damages are shown in the landlord's photographic evidence and the invoice from the contractor who repaired the damages. The landlord has also provided an invoice for the repairs to the damaged appliances. The landlord testified that the last item on the invoice appears to detail some of the appliance damage for \$170.00 and the landlord therefore removed this item from their claim. The landlord seeks to recover the following costs:

Replace one bathroom vanity door due to chips along the bottom of the door - \$140.00.

Replace three vanity doors in the second bathroom due to chipping along the bottom edge of the doors and the side gable - \$250.00.

Replace five sections of flooring due to chips to the vinyl plank flooring - \$150.00

Replace the bottom oven door due to dents, the fridge door due to dents and the dishwasher skin due to dents. The tenants had tried to paint over these dents but these were still visible - \$1,118.75

The landlord testified that the tenants were provided a copy of the paint colours and paint company name so they could match the paint at the end of the tenancy to use when repairing damage to the walls and trim. At the end of the tenancy the tenants had put paint up that was not by the same company and this resulted in mismatched walls. Had the tenants painted the entire wall after making repairs then this would not have been so noticeable. The landlord referred to the condition inspection report, their photographic evidence and the invoice from the painter. The landlord seeks to recover \$298.49 for their painter to repaint the walls and trim.

The landlord requested an Order to be permitted to keep the security deposit of \$775.00 to offset against their monetary claim.

The landlord also seeks to recover the filing fee of \$100.00.

The tenants' advocate stated that the tenants do not have any contention regarding the landlord's claim for cleaning and accept the cost of \$180.00.

The tenants' advocate stated that a large amount of the damage in the unit was caused because one of the tenants is in a wheelchair. S. 7(2) of the *Act* states that as the landlord became aware of this damage they should have taken steps to mitigate the damage. The tenants had asked for a bumper to be put on the front door which the landlord later did; however, no further protection was put inside the unit even though the landlord should have been aware that the tenant's wheelchair was causing some damage in order to mitigate the loss. The landlord did not communicate with the tenants and no warnings were given or advise to help the tenants prevent the damage. The tenants had asked the landlord to put bumpers on the edges and walls. The damage to the appliances was also caused from the wheelchair.

The tenants' advocate stated that although the landlord supplied paint numbers and colours there was no advice to the tenants about painting the entire wall. If the paint was a true match it would not have been an issue or if the tenants were advised to paint the entire wall then any difference in the paint colour would not be seen.

The tenants' advocate asked the landlord if it was made clear to the tenants that they should paint the entire wall. The landlord responded that they provided information about the correct paint colours to the tenants but the tenants used a different paint company and the paint colours did not match. Further to this paint will fade on a wall and this is why the tenants should have painted the entire wall.

The tenants do not dispute the landlord's claim to keep part of the security deposit.

The landlord argued that they have other wheelchairs users and electric scooter users living in the building and they have not caused damage to their units. Because the building was new when all the tenants moved in each tenant was given a three monthly inspection and for these tenants no damage was noted at that time. Other inspections are then carried out annually so the landlord would not have been aware of the damage until the tenants moved out.

The tenants' advocate argued that there were other agents for the landlord in the suite when they came to look at problems with the electricity and they should have noted that there was some damage at that time. The landlord argued that they would have only been there to look at problems with the electricity and not to do an inspection for damages.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for damage to the unit, I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Therefore with this test in mind I have considered each section of the landlord's claim as follows:

With regard to the landlords claim for cleaning; the tenants do not dispute this section of the landlord's claim. I therefore find in favor of the landlord's claim to recover **\$180.00**.

With regard to the landlord's claim for damage to the rental unit; under s. 32 (3) of the *Act* tenants are required to 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. While the tenant's argue that the landlord has not mitigated the loss in accordance with s. 7(2) of the *Act* by assisting the tenants in taking precautions

to prevent damage caused by the tenants wheelchair; there is no provision under the *Act* for a landlord to have to take any precautions. Furthermore, if at the three monthly inspection the landlord did not notice any damage to the unit the tenants cannot assume that the landlord would know that after that time any damage had been caused. I can therefore place little weight on the tenants' argument that this was the landlord's responsibility. The tenants should have repaired the damage in accordance with s. 32(3) of the *Act*. Accordingly I find the landlord has met the above test for damage to the rental unit; although I have reduced the landlord's claim for damages by \$170.00 as the landlord has claimed twice for some of the appliance repairs. The landlord is therefore entitled to the amount of **\$575.50**. I am also satisfied that the tenants caused damage to the stove, fridge and dishwasher and therefore I find in favor of the landlord's claim for **\$1,118.75**.

With regard to the landlord's claim for painting; the landlord provided the tenants with the make and colour code for the paint used in the unit. If the tenants had purchased the correct paint from the same paint company it is likely there would have been more of a match. In any event it is the tenants' responsibility to ensure that any painting done is not mismatched and if they found it was then they should have mitigated the loss by painting the entire wall not just sections of the wall. I find therefore the landlord has met the test for damages in this matter and I award the landlord the amount of **\$298.49**.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee from the tenants of **\$100.00** pursuant to s. 72(1) of the *Act*.

I Order the landlord to keep the security deposit of **\$775.00** in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlord for the balance as follows:

Cleaning the unit	\$180.00
Repairs	\$575.50
Repairs to appliances	\$1,118.75

Painting	\$298.49
Subtotal	\$2,172.74
Plus filing fee	\$100.00
Less security deposit	(-\$775.00)
Total amount due to the landlord	\$1,497.74

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,497.74**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 06, 2017

Residential Tenancy Branch

