



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, ~~MND~~ (MND), MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenant breached an agreement with the landlord; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the start of the hearing the landlord testified that the tenant has vacated the rental unit. The landlord therefore withdraws her application for an Order of Possession. The landlord also requested to amend her application to remove the section for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement and to change this to a Monetary Order for damage to the unit, site or property as she mixed up what she was applying for. The tenant did not raise any objections to this amendment and consequently I have amended the landlord's application accordingly.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence although the landlord testified that she only received three photographs from the tenant by email. As these photographs were not served in accordance with s. 88 of the *Act* and are largely illegible I have not considered them as evidence for this hearing. 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 site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on March 01, 2016 for a fixed term tenancy that was not due to end until February 28, 2017. Originally there were two tenants named on this agreement. In May 2016 the landlord released the male tenant from the agreement and the tenancy continued with the female tenant as a sole tenant. Rent for this unit was \$900.00 per month due on the 1st of each month. The tenant paid a security deposit of \$450.00 on February 15, 2016. The tenant vacated the rental unit on September 30, 2016.

The landlord testified that at the start of the original tenancy the tenant's co tenant attended the move in condition inspection and a report was provided to the tenants. There was little documented on the report as the unit was in a good condition. In May, 2016, when the tenant became a sole tenant, another move in condition report was completed. A copy of this second report has been provided in documentary evidence.

The landlord testified the tenant was at the unit on September 17, 2016 to pick up some belongings. The tenant was returning on September 24, 2016 and landlord was going to meet with the tenant to do the move out inspection. The tenant did not arrive and the landlord called her and the tenant said she was coming on September 29, 2016 instead.

The landlord testified that she was not around on that date so she arranged with her roommate to do the inspection with the tenant. The landlord's roommate was home all day in the landlords unit upstairs and would have come down to do the inspection after the tenant had finished cleaning if the tenant had knocked on the landlord's door. The tenant did not knock on the landlord's door and the landlord's roommate informed the landlord that the tenant had arrived, taken her stuff out of the unit and then left in her truck without knocking on the landlord's door.

The landlord did the inspection the following day in the tenant's absence. The landlord testified that she did not receive the tenant's forwarding address by mail but did receive it by email on October 04, 2016. After the landlord received the tenant's address the landlord sent the hearing documents to the tenant. Later the landlord received another email with a new post office address so the landlord called the post office and changed the tenant's address on the registered mail.

The landlord referred to her move out condition inspection report provided in documentary evidence. The landlord testified that the tenant caused the following damage in the unit which was not repaired at the end of the tenancy and the unit was not left reasonably clean at the end of the tenancy:

- There was an excessive amount of screws size holes left in the drywall when the landlord had to remove the screws and fill, sand and repaint the walls - \$100.00;
- The oven was not cleaned and the landlord's roommate had to apply three applications of oven cleaner over three days to get the oven clean - \$100.00;
- The windows and ledges were left unclean. These were cleaned by the landlord's roommate - \$50.00;
- The entire unit was not cleaned. The landlord's roommate and the landlord spent five hours each cleaning the unit and they seek to recover \$20.00 per hours for this work to an amount of \$200.00.

The landlord testified that the move out condition inspection report clearly documents the repairs and cleaning required in the unit.

The landlord seeks an Order permitting her to retain the security deposit in satisfaction of this claim.

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

The tenant disputed the landlord's claim. The tenant testified that she was not offered two opportunities to attend an inspection. The landlord had only said they would meet at the unit without mention of an inspection. The landlord's roommate handed the tenant a list of cleaning work required on September 29 when she had returned to the unit, but given such short notice the tenant testified that how could she do the extra work and that she had cleaned the unit. The landlord's roommate simply handed the tenant the letter and said it had nothing to do with him and then he left; he did not mention doing a move out inspection. When the tenant had finished cleaning the unit she knocked on the landlord's door to get the landlord's roommate to come down to inspect the unit but there was no answer.

The tenant testified that she gave the landlord her address by mail and by email on October 04, 2016. The tenant moved again and provided that post office box address to the landlord on October 29, 2016.

The tenant disputed the landlord's claim concerning damage caused by screw holes. The tenant testified that she was never given any instruction by the landlord about what to use to hang pictures or mirrors but there was certainly not an excessive amount of screw holes in the walls. The landlord sent the tenant an email on September 24, 2016 to say the landlord had already removed the screws. The tenant did not tell the landlord to do this and the tenant could have still filled the holes herself if she had been asked.

The tenant disputed the landlord's claim that she left the oven dirty; the tenant testified that she had left the oven clean and although it may have needed some extra cleaning it would not have needed three applications of oven cleaner over three days. The tenant testified that she would be willing to pay for one hours' worth of cleaning at \$20.00.

The tenant disputed the landlord's claim concerning dirty windows and ledges. The tenant testified that there were three windows in the unit which she did clean including the ledges. There was one other window that could not be accessed as the blind was broken and would have fallen off if the tenant had moved it to clean that window.

The tenant disputed the landlord's claim regarding the generally cleaning of the unit; the tenant testified that she had cleaned the entire unit and it was in a better condition then it was in at the start of the tenancy. The tenant questioned why the landlord had not provided a copy of the original move in inspection report to show the condition of the unit when the tenant actually moved in and not when she became the sole tenant.

The tenant disputed the landlord's claim to retain the security deposit and seeks to recover this from the landlord.

The landlord asked the tenant about when she came to the unit did she just get her stuff and leave in her truck. The tenant responded no. The landlord asked did you clean the windows and ledges. The tenant responded yes. The landlord asked the tenant if she had a dirt catcher in the bottom of the oven and if so, did she look under it. The tenant responded that she had a piece of foil in the oven and did not look under it and it must have been there when she moved in. The landlord asked the tenant if in addition to pictures and mirror, did the tenant put up a pole for curtains; and if so, did she fill the holes when she moved out. The tenant responded that she did hang curtains as none were provided and she did not fill the holes as the landlord had done it before the tenant had finished moving out. The landlord asked if the tenant washed the walls. The tenant said no they were not dirty.

The tenant declined the opportunity to cross examine the landlord.

Analysis

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

I refer the parties to s. 35 (1) and (2) of the *Act* which states:

- 35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
- (a) *on or after the day the tenant ceases to occupy the rental unit, or*
 - (b) *on another mutually agreed day.*
- (2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

The landlord may make the inspection and complete and sign the report without the tenant if the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or the tenant has abandoned the rental unit.

With this in mind I find there is insufficient evidence from the landlord to show that she did offer the tenant two opportunities to attend a move out condition inspection of the unit at the end of the tenancy. The landlord's evidence suggests that it may have been a casual conversation about a move out inspection but no firm dates or times were provided to the tenant and the landlord did not provide the tenant with a Final Opportunity for Inspection Notice. Consequently, in accordance with s. 36(2)(a) of the Act I find the landlord has extinguished her right to file a claim to keep the security deposit.

While I accept the landlord did do the inspection report in the tenant's absence I can place little weight on the content of this report as the tenant was not given the opportunity to attend the inspection. I will however consider the landlord's claim for damages.

With regard to the landlord's claim for the filling, sanding and painting of the walls in the unit due to screw holes; the parties agreed that the landlord went into the unit before the tenancy had legally ended and filled the screw holes. The landlord therefore did this work before the tenant had the opportunity to fulfill her obligations to repair any damage at the end of the tenancy and I find the landlord will have to bear the cost for these repairs.

With regard to the landlord's claim for cleaning the oven, the tenant agreed that she may not have left the oven completely clean but disputed that it would have taken three applications of oven cleaner. Without any corroborating evidence from the landlord that the oven was so dirty that it required three applications of oven cleaner and therefore extra time to clean the oven; I find I must limit the landlord's claim to a nominal amount of **\$50.00**.

With regard to the landlord's claim for window and ledge cleaning and for general cleaning in the unit; the tenant testified that she cleaned three of the four windows but could not clean one because of a broken blind and testified that she had cleaned the unit. The landlord testified that none of the windows were cleaned and the unit was not cleaned. The landlord referred to her move out inspection report which I have already stated carries very little weight. The landlord has not provided any other evidence such as

photographs or asked her roommate to attend the hearing as a witness or even provide a written statement, if he helped clean the unit.

The landlord has the burden of proof in this matter; it is important to note that 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.

The landlord has insufficient evidence to support her claim that the unit including the windows and ledges were not left reasonably clean and therefore I find the landlord has not met the burden of proof in this matter and her application for cleaning the windows, ledges and doing a general clean is dismissed. As the landlord's application has been mostly unsuccessful I find the landlord is not entitled to recover her filing fee of \$100.00 from the tenant.

While the landlord has extinguished her right to file a claim to keep the security deposit; I find that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$50.00 from the tenant's security deposit to compensate the landlord for the oven cleaning.

The balance of the security deposit must be returned to the tenant.

Conclusion

HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may retain **\$50.00** from the tenant's security deposit pursuant to s. 38(4)(b) of the *Act*.

A copy of the tenant's decision will be accompanied by a Monetary Order for \$400.00. The Order must be served on the landlord. Should the landlord 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: April 13, 2017

Residential Tenancy Branch