



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S

Introduction

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

The landlord company was represented at the hearing by the owner of the rental unit, who gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant also attended, gave affirmed testimony and called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit 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 testified that a property management company has been retained to provide property management services for this rental unit. The tenancy began as a fixed term commencing on July 22, 2018 expiring on July 31, 2019, however the tenant

vacated the rental unit on May 31, 2019. Rent in the amount of \$895.00 per month was payable on the 1st day of each month and there are no arrears to the end of May, 2019. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$447.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a strata condominium unit in a complex containing 13 suites. A copy of the tenancy agreement has also been provided.

The landlord further testified that a move-in condition inspection report was completed on July 20, 2018 and a move-out condition inspection report was completed on May 31, 2019. The property manager used the same form for move-in and move-out and a copy has been provided for this hearing, however the move-in portion is completed in black ink and the move-out portion in red ink. It also contains the tenant's forwarding address and signatures of a landlord and the tenant on both occasions.

The rental unit was not left reasonably clean and undamaged at the end of the tenancy, and the landlord has provided invoices for having the rental unit cleaned at a cost of \$126.00 and re-painted at a cost of \$462.00. Also provided are numerous photographs which the landlord testified he took himself on June 2 and up to June 6, 2019. The landlord testified that the photographs, although not taken the same day, are consistent with the move-out condition inspection report. A new tenant was moving in, and the landlord made arrangements for cleaning and painting for the new tenant.

The rental unit had been newly painted in June, 2018, just prior to this tenancy. At the end of the tenancy there were many large nail holes to fill and patch, and there was no wall that didn't have to be patched.

The rental unit was re-rented effective June 8, 2019.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$120.00 for suite cleaning;
- \$462.00 for suite painting; and
- \$100.00 for recovery of the filing fee for this application.

Invoices have been provided and the one for cleaning is \$120.00 in addition to \$6.00 GST. The landlord also seeks to keep the \$447.50 security deposit in partial satisfaction.

The tenant testified that she hired a professional carpet cleaner, and had her boyfriend pull out appliances to clean under and behind. It was not a big apartment, and the tenant made sure it was left clean, but did not clean the blinds.

The rental unit was not 100% perfect when the tenant moved in and was told by the property manager that she could hang pictures. The tenant had also asked if she could paint and was told she would have to talk to the owner. The tenant had sold her house and needed a place, and during move-in she didn't bother to ask the landlord or complete any painting.

The tenant did not agree to the markings in the move-out portion of the report, and it states: "Tenant not in agreement to forfeit deposit upon move-out." The tenant disagrees with the landlord's claims.

The tenant's witness testified that he is the tenant's boyfriend and helped the tenant clean at the end of the tenancy. They did a very thorough cleaning, and when the appliances were pulled out, it was clear they had not been pulled out and cleaned behind and underneath at the beginning of the tenancy. The witness was not present at move-in and has not seen the reports, but has seen the landlord's photographs.

The tenant told the witness that the tenant had been given permission to hang pictures if she used small nails, and that would be okay, so the tenant didn't fill the nail holes at the end of the tenancy.

The witness stated that he sees an injustice to the landlord's claim.

Analysis

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Act* also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit. That means I *may* consider the photographs, but I *must* consider the reports.

I have reviewed all of the evidentiary material provided by the landlord, but no evidence has been provided by the tenant. The tenant's signature appears on the report at

move-in indicating that the tenant agreed that the report fairly represented the condition of the rental unit, but did not agree to the report at move-out.

The report shows that at move-out the bathroom sink, shower, fan cover and light fixtures were left dusty or dirty. The professionally cleaned carpet is noted at move-out, but the walls in the bedroom were not cleaned, nor were the screens, windows and blinds. Although the kitchen area doesn't appear on the report, i comparing the 2 reports, I am satisfied that the tenant did not leave the rental unit reasonably clean and undamaged. I also find that the landlord incurred a loss as a result of the tenant's failure to leave the rental unit reasonably clean and undamaged, and the landlord has established the claim.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$447.50 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord for the difference, totalling \$240.50.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$447.50 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$240.50.

This order is final and binding and may be enforced.

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 24, 2019

Residential Tenancy Branch