



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twenty One Holdings Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing convened to consider the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agent (landlord) and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The tenant confirmed receiving the landlord's evidence; however, the landlord denied receiving the tenant's evidence.

The tenant said he had not sent the evidence to the landlord and I informed the tenant that although I could not allow the tenant's written submission, he could provide testimony from the written documents.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit, to keep all or part of the security deposit, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of July 1, 2018, a fixed term through June 30, 2019, monthly rent of \$2,500, due on the 1st day of the month, and a security deposit of \$1,250 being paid by the tenant to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenancy ended on September 28, 2020.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is \$350. While the landlord did not provide a specific breakdown of the claim, the landlord explained that they incurred costs in cleaning the rental unit after the tenancy ended and in painting. Additionally, the landlord claims \$100 for an unreturned FOB.

As to the claim for cleaning, the landlord submitted tenants are informed that the landlord charges a 3 hour minimum for cleaning and in this particular case, the cleaners required at least 5 hours. Filed into evidence was a cleaning invoice, in the amount of \$300.

As to the cleaning, the landlord referred to his photographs evidence and pointed out the areas of concern, which were primarily the main bathroom and baseboards. The landlord said that there was a large stain on the kitchen countertop and the cleaner scrubbed for an hour to remove it. The landlord submitted that around the toilet and bathroom fan were left dirty and inside a cabinet door and drawer were not clean. Filed into evidence were photographs of certain areas of the rental unit.

The landlord submitted that the tenant attempted to fill in some of the walls and re-paint; however, the paint did not match the rest of the room, resulting in the whole room having to be re-painted. The landlord confirmed not supplying photographs of the walls.

The landlord explained that they were not charging for the full invoice price for cleaning or painting.

Tenant's response –

The tenant agreed to the charge for the FOB. He said he forgot to return it.

As to the claims for cleaning, the tenant submitted that he and his brother-in-law spent 10 hours cleaning the rental unit at the end of the tenancy. The tenant said he spent \$100 in cleaning supplies and asked the landlord if they could return for another few hours to clean further, if the landlord was not satisfied with their cleaning.

As to the walls, the landlord submitted that he asked the landlord about the paint code for the walls and the landlord text messaged him with the color code. The tenant said he showed the employee at the paint store the text message with the paint code, and that paint was what he used on the walls.

The tenant additionally denied causing damage to the wall which required repainting, as there was a flood.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

I have reviewed the photographs submitted by the landlord, which did not include any of the walls. Although the landlord's photographs show minor deficiencies in some items, such as a dusty bathroom fan and a ring-shaped stain on the countertop, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean.

I accept the tenant's testimony that he and his brother-in-law cleaned the rental unit for 10 hours, as my viewing of the landlord's photographs indicated the rental unit was left reasonably clean.

Most of the photographs were taken at close-range to the claimed damage or unclean state. On other photographs, instead of seeing damage or unclean conditions, I find support for the tenant's claim that he left the rental unit reasonably clean. For instance, inside a cabinet showed it being clean and tidy. If there were marks, I find this to be reasonable wear and tear for a 2 year, 3 month tenancy.

As to the landlord's claim for painting, I find the tenant cannot be penalized for a different paint color, if he purchased the paint using the color code provided by the landlord. The landlord did not dispute that he provided the color code to the tenant.

For these reasons, I find the landlord submitted insufficient evidence to show that the rental unit was not left reasonably cleaned and undamaged, excepting reasonable wear and tear.

As a result, I dismiss the landlord's claim for cleaning and painting.

As the tenant acknowledged owing \$100 for the FOB, I grant the landlord this amount.

As the landlord had some measure of success with their application, I grant them recovery of their filing fee of \$100.

Using the offsetting provisions contained in section 72 of the Act, the landlord may withhold \$200 from the tenant's security deposit of \$1,250 in full satisfaction of their monetary award.

I order the landlord to return the balance of the tenant's security deposit of \$1,050, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$1,050, which is included with the tenant's Decision. This monetary order is cancelled and of no force or effect if the landlord returns the balance of the tenant's security deposit.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord has been granted a monetary award of \$200, as described above, and is directed to retain this amount from the tenant's security deposit of \$1,250.

The landlord is ordered to return the balance of the tenant's security deposit of \$1,050 and the tenant is granted a monetary order in that amount, to be used if necessary.

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 2, 2021

Residential Tenancy Branch