



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the rental unit, an order to retain the security deposit in partial satisfaction of the claim and recovery of the filing fee for the cost of the application.

During the hearing the tenant indicated that the surname she used when she entered the tenancy is no longer her legal surname, and with the landlord's consent I amended the application to indicate the tenant's current legal surname.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 1, 2008. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$350. The tenancy ended on July 31, 2008. The landlord submitted that the tenants were heavy smokers, and the entire unit smelled rank from cigarette smoke so the unit required extensive cleaning and painting. The landlord claims \$270 for 15 hours of cleaning the walls, at \$18 per hour; \$800 for estimated painting costs for the ceiling; and \$308.70 for estimated costs for carpet cleaning. The landlord acknowledged that the previous occupants were also heavy smokers.

The tenant's position was that the landlord knew that the tenant was a smoker, the

tenancy agreement did not forbid smoking, and the previous occupants were heavier smokers than the tenant, and the walls and ceiling were not painted before the tenant moved in. The tenant's witness, who had occupied the unit since 1992, knew that no painting had been done since at least 1992. The tenant left paint, which she valued at \$80, for the landlord to use to paint the ceiling. The tenant disputed the need to clean the walls before painting. The tenant acknowledged that the carpets required cleaning, but she disputed the landlord's estimate for carpet cleaning costs as excessive.

The response of the landlord to the tenant's submissions was that the painting company said that the walls would have to be washed before they could be painted because there was grime as well as smoke damage. Further, the tenant caused other damage including holes in the walls which required repair before painting. The landlord was unable to use the paint that the tenant left to paint the ceilings, as the paint was several years old and no longer useable.

Analysis

I find that the tenant has acknowledged that the carpets needed cleaning and the estimated carpet cleaning cost of \$308.70 is reasonable, and I therefore allow the landlord's claim in full on this point. In regard to ceiling painting, the tenant stated that she intended to paint the ceiling and had left paint for the landlord for that purpose, and I find that the tenant has therefore acknowledged at least to some extent her responsibility for smoke damage to the ceiling. However, given that no painting had been done for several years, the landlord knew that the previous occupants were smokers, and the average useful life of interior paint is 4 years, I find that the tenant minimally responsible for the cost of painting the ceilings, in the amount of \$80. I accept the landlord's evidence that cleaning the walls was necessary, but I am not satisfied that the tenant caused all of the damage that required such extensive cleaning. I therefore find that the landlord is entitled to half the amount claimed for cleaning the walls, in the amount of \$135. As the landlord's claim was partially successful, she is entitled to partial recovery of the filing fee, in the amount of \$25, for a total of \$548.70.

Conclusion

I order that the landlord retain the deposit and interest of \$364.76 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$183.94. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 07, 2008.