



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 the landlord's application for compensation for damage to the rental unit, retention of part of the security deposit and recovery of the filing fee. Both parties were represented at the hearing and had an opportunity to be heard.

Issue(s) to be Decided

1. Whether the tenant's actions caused damage to the rental unit or resulted in the landlord incurring costs for damages or loss under the Act, regulation or tenancy agreement.
2. Whether the landlord is entitled to retain part of the security deposit.
3. Award of the filing fee.
4. Monetary Order.

Background and Evidence

The landlord testified that only one named tenant is identified on the tenancy agreement. The tenancy agreement provided as evidence is actually an application for tenancy rather than a tenancy agreement but indicated that two adults would be occupying the rental unit. The tenant appearing for the hearing testified that the named tenants were co-tenants and that he had paid the security deposit. The tenant testified that the co-tenant moved out and he had an arrangement with the landlord to continue to pay the rent. The agent did not have a written record of the arrangement but did not dispute it either. I find that the named tenants had a verbal tenancy agreement and were co-tenants. As I did not hear testimony that the other tenant had given the

landlord notice to end the tenancy I found that the tenant that appeared before me was a co-tenant and that this hearing addresses the security deposit paid by the co-tenants on July 4, 2007.

Upon hearing undisputed testimony of the parties, I find the following relevant facts concerning the tenancy. The tenancy commenced August 1, 2007. The tenants had paid a \$600.00 security deposit on July 4, 2007. The tenancy ended July 15, 2008. The landlord did not prepare a move-in at the commencement of the tenancy or move-out inspection report at the end of the tenancy.

The landlord claimed that the tenant damaged the rental unit by painting the kitchen and living room dark red. The tenant testified that the kitchen was dark red when he moved in and that he painted the living room and hallway light earth colours, and the doors, trim and ceilings with white paint, with the permission of the landlord. The landlord submitted photographs as evidence. Although the landlord did not serve the photographs upon the tenant, the tenant consented to me looking at the pictures. The photographs show a red kitchen, light brown or beige living room and hallway, white doors, trim and ceilings. The agent stated that the unit has not been repainted since the tenancy ended and new tenants have since moved in to the rental unit; however, most tenants prefer light neutral colours and the unit will need to be painted white. The tenant refuted the landlord's claims by saying the landlord and the new tenants liked the colours he painted the walls. The agent estimated that paint and primer cost \$100.18, labour costs \$275.00 and management fees cost \$100.00.

The landlord was claiming \$56.00 to dispose of refuse left behind in the rental unit by the tenant. The tenant testified that two sleeping bags in a closet under the stairs were there when he moved in and boxes were left behind that contained the light fixtures taken down in the rental unit. The landlord had served a copy of a receipt for the dump

to the tenant. The dump fees amounted to \$6 with the balance of \$50.00 being for labour costs to take the items to the dump.

The tenant testified that he verbally provided the landlord with his forwarding address and was expecting a refund of his security deposit rather than service of hearing documents.

Analysis

With respect to claims for compensation, the claimant has the burden to prove that the other party damaged the rental unit or otherwise violated the Act, regulation or tenancy agreement and that the damage or violation caused the claimant to incur costs. Those costs must be verifiable and the party suffering the loss must minimize the amount of loss incurred. In this case, the onus is on the landlord, as he is the claimant, to show that the tenant damaged the rental unit or violated the Act, regulation or tenancy agreement and that the actions of the tenant caused the landlord to incur costs that can be verified.

Upon review of the photographs supplied by the landlord, I find the photographs support the tenant's testimony with respect to the colours the tenant painted the rental unit and I accept the tenant's position that he did not paint the kitchen or living room dark red. From the photographs and testimony, I do not find that the tenant has damaged the rental unit by painting the living room and hallway light brown. Even if I did find that the tenant painted the rental with colours that are not ordinarily acceptable to tenants or the landlord, I find the landlord has failed to provide sufficient evidence to verify the amount of damage or loss. An estimate of painting costs without other supporting evidence to indicate it is the amount that was or would be payable does not satisfy the landlord's onus to substantiate the amount of his loss. Therefore, I do not award the landlord any amount for painting the rental unit.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I do not find the landlord has sufficiently proven that the items left in the rental unit belonged to the tenant or was the tenants' obligation to remove. Therefore, the landlord is not awarded costs for garbage removal.

In light of the above, I do not authorize the landlord to retain any part of the tenants' security deposit. I do not grant the landlord's request to recover the filing fee. The landlord's application is dismissed without leave to reapply.

Where a landlord makes a claim to retain all or part of a security deposit and that claim is dismissed, the Residential Tenancy Policy Guideline 17 provides that the tenant will be provided with a Monetary Order. Accordingly, I provide with this decision for the tenant a Monetary Order in the amount of \$611.61 including accrued interest of \$11.61.

The tenant must serve the Monetary Order upon the landlord to enforce payment and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

As this decision settles the matter of the security deposit made on behalf of both named co-tenants, the other tenant is precluded from making an application for return of the security deposit against the landlord.

Conclusion

The tenants are awarded a Monetary Order in the amount of \$611.61.

October 15, 2008