



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 a Monetary Order for damages to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties were represented at the hearing and had an opportunity to be heard and respond to the other party's submissions.

The tenant's guardian requested an adjournment due to emotional stress she has endured recently. The landlord objected to the adjournment. I proceeded with the hearing and found the guardian very capable of responding to the landlord's claims.

Issue(s) to be Decided

1. Whether the landlord has established an entitlement to compensation for damages to the rental unit and if so, the quantum of the damage.
2. Whether the landlord may retain the tenant's security deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings regarding the tenancy. The tenancy commenced February 1, 2008 and ended October 31, 2008. A \$250.00 security deposit was paid shortly after the tenancy commenced. A move-in inspection was conducted February 1, 2008 and a move-out inspection was conducted on November 4, 2008. The move-in inspection report was signed by both the tenant

and the tenant's guardian. The move-out inspection report was signed by the tenant's guardian. The tenant was a minor during the term of the tenancy.

The landlord is claiming damages of \$861.92 to replace carpeting in two rooms. The landlord submitted that the bedroom carpet has two cigarette burn marks and the living room carpet has ONE cigarette burn mark caused by the tenant smoking in the rental unit despite the tenant being prohibited from smoking in the unit. The landlord provided photographs of the burn marks and stains in the carpet. The move-out inspection report indicates that there are burn marks and smoke smell at the end of the tenancy; however, the move-in inspection report describes the carpets as "old/small stains/no burns/ragged edges". The landlord estimated that the carpeting is 15 years old.

The guardian was of the position that the carpet was old and ratty at the commencement of the tenancy and that the landlord is trying to improve the property at the tenant's expense since the residential property is up for sale. The guardian acknowledged that the tenant was caught smoking in the rental unit and that the tenant knew he was not permitted to smoke in the unit.

The landlord is claiming \$129.38 to repair a broken window. The landlord supplied a copy of the invoice to support the cost of the window repair. The guardian acknowledged that the tenant broke the window. The guardian was of the position that her husband could have repaired the window for less had the landlord permitted him to do the work.

The landlord is claiming \$140.00 to repair a hole in the wall. The landlord provided a quote to support the cost of the repair. The guardian acknowledged that the tenant caused a hole in the wall and attempted to repair it although the replastering was not professional-looking. The guardian was of the position that the hole could have been

improved by her husband if the landlord would have permitted him the opportunity to repair it.

The landlord is claiming \$30.00 for a missing smoke detector. The landlord was of the position that the smoke detector was tested and worked prior to the tenancy commencing. The landlord suggested that the tenant disposed of the smoke detector because he was smoking in the rental unit. Upon enquiry, the landlord did not know how old the smoke detector was. The guardian testified that the smoke detector was not working even after she purchased new batteries and installed them in the smoke detector. The smoke detector was inadvertently thrown out by the tenant.

The landlord is seeking \$44.00 and \$11.00 for additional cleaning required to remove the smoke smell from the walls and grime from the shelves and flooring. Photographs were supplied of the shelving unit and floors. The landlord based her claim on an estimate on \$22.00 per hour which is the market rate for cleaners in the area. The guardian objected to the need to wash the walls as the walls were cleaned from top to bottom at the end of the tenancy. The guardian objected the additional cleaning costs for the shelves as the shelf unit was from the garage and was dirty when the tenancy began. A black mark could be seen in the photographs which the landlord described as a burn mark and the guardian described as a grease mark from the garage.

The landlord testified that she tried to settle the matter of damages with the guardian by attempting to gain her consent to retain the security deposit; however, the guardian would not consent. During the hearing, the guardian offered to settle the matter for the amount of the security deposit and the filing fee. The landlord rejected the guardian's offer and the hearing proceeded.

Analysis

The Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. The Act requires a tenant to repair any damage caused by the tenant, or a person permitted on the property by the tenant. If the tenant repairs the damage, the repairs must be completed before the tenancy ends.

I am satisfied that the tenant caused the burn marks in the carpets and that the carpets likely smell like smoke from the tenant smoking in the rental unit. Where a tenant damages the rental unit, the landlord is entitled to an award that places the landlord in the same position they were in immediately prior to the damage. Compensation is generally measured as either the amount of the repair costs or replacement costs, less depreciation. Depreciation must be taken into consideration to ensure the landlord is not unjustly enriched at the tenant's expense. Considering the carpet is approximately 15 years old and carpets generally have a useful life of 10 years, according to the Residential Tenancy Policy Guideline 37, I find the carpets were at or near the end of their useful life. Therefore, I conclude that the diminished value of the carpet to be very minimal and I make no award for carpet replacement. Had the landlord paid to have the carpets cleaned to remove the smoke smell I would have awarded the landlord the cost of carpet cleaning. Since the landlord indicated she would be replacing the carpet rather than cleaning it, I make no award towards carpet cleaning.

As the landlord substantiated her costs to have the window repaired and there is no dispute the tenant caused the damage, the landlord is awarded \$129.38 for the window repair. I do not find that the landlord was obligated to permit the guardian's husband on to the property to repair the window after the tenancy ended. I do not find the repair costs to be unreasonable.

I am satisfied that the wall repair made by the tenant was inadequate and that the hole must be repaired properly. I find the landlord's evidence that the repair will cost \$140.00 to be reasonable and I award the landlord that amount.

With respect to the smoke detector, the landlord did not provide evidence to support the quantum of the claim and I dismiss that portion of the landlord's claim. Even if the landlord has supplied a receipt for a replacement smoke detector, smoke detectors have a limited useful life and the landlord would only have been entitled for the remaining useful life of the missing smoke detector.

As I heard disputed testimony concerning the need to wash the walls and I heard that the carpets had not been cleaned and deodorized I am unable to conclude that the smoke smell is coming from the walls. I find it more likely that the smell is coming from the carpet. Therefore, I find the landlord has not satisfied me that additional cleaning is required for the walls.

From the pictures of the shelving and flooring, I am satisfied that additional cleaning is required on the floors and I award the landlord the amount of \$11.00 as claimed.

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the above awards. I also award the landlord the cost of the filing fee. I provide with this decision a Monetary Order in the following amount:

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|-------------------------------------|-----------------|
| Window replacement | \$ 129.38 |
| Repair hole in wall | 140.00 |
| Clean shelving/floor | 11.00 |
| Filing fee | <u>50.00</u> |
| Subtotal | \$ 330.38 |
| Less: security deposit and interest | <u>(253.43)</u> |
| Monetary Order | <u>\$ 76.95</u> |

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

Conclusion

The landlord is authorized to retain the tenant's security deposit and interest. The landlord is also provided a Monetary Order in the amount of \$76.95.

January 2, 2009

Date of Decision

Dispute Resolution Officer