



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MND, MNSD, & FF

Introduction:

This hearing dealt with an application by the landlord seeking compensation due to damage to the rental unit. The landlord also seeks to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issue to be Determined:

Has the landlord established a monetary claim related to damage to the rental unit?

Background and Evidence:

The tenancy agreement submitted for this hearing began on September 1, 2007 for a fixed term tenancy ending on August 31, 2008. The monthly rent was \$3,000.00 and a security deposit of \$1,500.00 was paid on August 22, 2005. This security deposit was transferred from the previous tenant to this tenant effective September 1, 2005. The tenant has been the head tenant of the rental unit since that date. The tenancy agreement of September 1, 2007 was extended for an additional two months beyond the effective end date of August 31, 2008. The tenant vacated the rental unit effective October 31, 2008.

There was an original move-in condition inspection of the rental unit with the tenant back in 2005 when he took over the tenancy. The tenant was previously a sub-tenant of the original tenant before taking over the tenancy on September 1, 2005. The landlord provided the tenant a move-in condition inspection when this tenant took over the tenancy. There was an issue from the previous tenant regarding a change in the paint colour of one of the bedrooms. The landlord provided the tenant with a letter dated September 3, 2005 which addressed the issue of the bedroom which had been painted without the landlord's consent. In this letter the landlord wrote in part:

"Since you have requested to keep this current color in your bedroom, although you have agreed to have the bedroom repainted prior to the date you vacate the premises, in its original Benjamin Moore (955 Taupe) color that the rent of the entire house is painted in, it's crucial you and your tenants not change any other paint colors without my prior written consent as per Clause 15, page 3 Use of Premises, indicates. (In my experience this has been a historical problem when there are multiple roommates, as in this case)

[Reproduced as Written]

The landlord also acknowledged in this letter the difficulty with their move-in condition inspection given that the tenant was assuming the tenancy and there was multiple individuals occupying the rental unit at the time.

The landlord presented evidence that the rental unit was last painted in approximately 2000 or 2001. The landlord stated that he used a neutral colour throughout the rental unit and at the end of this tenancy the rental unit had been painted in different colours.

The move-in condition inspection between the landlord and tenant was done on August 22, 2005. The report only comments on the paint of the front bedroom, identified as the bedroom this tenant occupied before and after he assumed the tenancy. The report indicates that colour change to the bedroom and notes that the tenant will repaint when he vacates the rental unit.

The landlord and tenant dispute the circumstances of the move-out condition inspection on October 31, 2008. It is clear that the change of paint colour throughout the rental unit was a contentious issue which disrupted the parties' willingness to properly conduct the inspection together. The landlord stated that the tenant did not participate and sought only the return of his security deposit. The tenant submitted that the landlord did not conduct the inspection with him and became aggressive regarding his issue with the change of paint colour in the rental unit.

The landlord provided a sworn affidavit from a witness who attended the move-out inspection on October 31, 2008 with the landlord. This evidence confirms that the landlord conducted the move-out inspection without the tenant who was finishing his move. The witness states that the tenant did come into the rental unit while the landlord was inspecting the unit and demanded his security deposit. The witness states that the landlord indicated that he was conducting the move-out inspection which would last for approximately 45 minutes. The tenant left the rental unit without participating in the move-out inspection.

The landlord is seeking damages related to painting the rental unit back to its original colour due to the tenant's breach of the tenancy agreement, costs to replace locks on the various bedroom doors which sub-tenants apparently put on the doors, loss of rental revenue while work was completed and for general cleaning costs because the rental unit was not cleaned to a reasonable level. The landlord has requested compensation for the sum of \$3,583.75 less the tenant's security deposit plus interest.

The tenant disputes the landlord's application. The tenant also raised the issue that the landlord failed to serve his evidence in accordance with the rules and procedures. The tenant requested that the landlord's evidence not be considered as part of this hearing. I decided to accept the landlord's evidence; however, I provided the tenant with the opportunity to adjourn the hearing to grant him further opportunity to respond to the landlord's evidence. The tenant decided to proceed with the hearing and address the landlord's evidence and allegations through the hearing process.

The tenant's main argument was that the landlord provided written consent for the painting completed in the rental unit. The tenant does not deny painting the rental unit but submitted that the landlord provided him with the paint. The tenant identified the green colour within some of the photographs as the paint provided by the landlord. The tenant also argued that the blue colour in the bathroom was pre-existing and also raised the issue of the orange paint in the bedroom as being a pre-existing issue with the previous tenant. The tenant stated that the locks on the bedroom doors were also installed prior to his tenancy and that he never received keys for these locks. The tenant agreed that he did not clean under the appliances but denies that he did not reasonably clean all other aspects of the rental unit to a standard required by the *Act*.

The tenant provided several letters from his sub-tenants and brought forward two witnesses for the hearing. Both of the witnesses provided affirmed evidence that they overheard telephone conversations allegedly between the tenant and the landlord discussing the painting of the rental unit. Both witnesses also stated that they observed the landlord dropping off paint and supplies to the rental unit. The witnesses confirmed on cross examination that they could not hear both sides of the telephone conversations and that they could not identify the landlord. The witnesses were also vague about the dates they submit the landlord allegedly dropped off paint and supplies.

Analysis:

I grant the landlord application in part. I do not accept the submissions or evidence of the tenant that he had verbal permission to paint the rental unit. In making this decision I rely on the written evidence opposed to the hearsay evidence provided by the tenant's witnesses. Their evidence is not reliable since they were unable to identify the landlord and did not have direct knowledge of the verbal conversations. I accept the written documentation which clearly emphasized to the tenant his obligations as the head tenant and the requirement that he was to obtain written permission from the landlord if any painting or colour changes were to be made to the rental unit. I accept that the tenant painted the rental unit and breached the tenancy agreement in doing so.

I do not accept the total amount claimed by the landlord however given that the rental unit was last painted in approximately 2000-2001 and that the original colour change to the one bedroom was done during the first tenancy. The landlord had the obligation at that time to pursue the change of colour with the head tenant at that time. Given that the landlord would have been expected to have painted the rental unit by this time, regardless of the actions of the tenant I will grant the landlord 50 percent of the claimed amount for the sum of \$1,036.88.

In addition to this sum I also find it is reasonable to award the landlord a pro-rated sum of lost rental revenue for the period that it took to paint the rental unit. I accept the landlord's claim for \$688.00 which represents approximately 7 days of lost rent.

I deny the landlord's claim for the cost to clean the carpets of the rental unit. The tenant provided evidence which confirm that he had the carpets cleaned on October 20, 2008. Finally, I have considered the landlord's claim for the sum of \$675.00 related to cleaning the rental unit, removing debris left behind by the tenant and for changing the 6 locks in the bedrooms of the rental unit. The evidence of the tenant denied any of these costs

except for his acknowledgement that he did not clean underneath the appliances. I am satisfied from the photographic evidence submitted that the kitchen and appliances were not particularly clean. However, I give that the landlord painted the rental unit I do not accept that it was necessary to wash the walls of the rental unit. Out of the \$100.00 claimed for cleaning I grant the landlord the sum of \$75.00.

The landlord's claim for costs for changing the locks throughout the rental unit is difficult to establish. It is clear that for several years there have been multiple sub-tenants but given the evidence I cannot establish when the locks were changed. Since this tenant was the second "head tenant" I find it is likely that at least some of the locks may have been changed under the previous head tenant. Therefore, I find it is fair in the circumstances to find the tenant responsible for 50 percent of the landlord's claim for the sum of \$220.00. I accept the sum of \$135.00 as a reasonable expense for removing and disposing of the debris left behind by the tenant.

I find that the landlord has established a total monetary claim for the sum of \$2,204.88 including the recovery of the \$50.00 filling fee paid by the landlord for this application. From this sum I Order that the landlord may retain the tenant's security deposit plus interest of \$1,553.14 in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance owed of **\$651.74**.

Conclusion:

I have granted the landlord's application in part due to damage and loss resulting from the tenant's breach of the tenancy agreement and *Act*.

Dated February 3, 2009.

Dispute Resolution Officer