

Dispute Resolution Services

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

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant and an application by the landlord. The tenant applied seeking a monetary order for the return of the security deposit and compensation under section 38(6) of the Residential Tenancy Act (the Act).

The landlord applies seeking an order to retain the security deposit in partial satisfaction of costs for remediation of the rental unit. The applications are inclusive of an application for recovery of the filing fee for the cost of the application.

Both, the tenant and the landlord were represented at today's hearing and each participated in the conference call via testimony and prior submissions

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The agreed facts before me, under affirmation by both parties, are as following.

The tenancy began on January 01, 2005 and ended on February 28, 2009. The landlord collected a security deposit of \$637.50 at the outset of the tenancy. A start of tenancy inspection was conducted with the landlord and tenant in December of 2004. An end of tenancy inspection with the landlord and tenant was conducted in the first week of February 2009, and a second inspection was conducted February 24, 2009.

The landlord and tenant discussed the condition of the rental unit on both occasions but did not agree on the security deposit nor did both sign the inspection document on either of those occasions. The tenant's testimony is that, to date, he has not received a copy of the end of tenancy inspection from the landlord, with or without his signature; however, the tenant and landlord were both in attendance at the inspections.

The parties identified that some of the walls required remediation. The parties agree that the tenant was given an opportunity to remedy the deficiency in the condition of the painted wall surfaces. The tenant determined to remove dirt and crayon and pen markings on certain portions of walls or surfaces and repainted only these portions. The tenant's testimony is that he remedied / repainted only those sections which he determined required repainting – leaving all other wall surfaces which he determined were deficient to a 'wear and tear' standard. The landlord acknowledged the existence of normal 'wear and tear'.

The landlord determined the tenant's repainting efforts were not a proper remedy to the expectation to bring the rental unit to a standard which would make the rental unit acceptable for re-renting. The landlord and tenant both agreed the repainting only covered spots and specific areas of certain walls and the landlord determined the work left the walls noticeably poorly matched, and therefore the landlord then determined to repaint the entire rental unit. The landlord's invoice for painting the entire rental unit - for supplies, labour and 'vehicle costs' is substantive at \$4084.92. Regardless, the landlord's claim of \$637, plus accrued interest on this amount represents only one sixth the cost of repainting the entire unit.

The landlord acknowledged they received and were in possession of the tenant's forwarding address in writing and request for the return of the security deposit on the date the tenancy ended.

Analysis

As to the tenant's claim:

Section 38(1) of the Act provides as follows:

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Further,

- 38(6) If a landlord does not comply with subsection (1), the landlord
 - 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
 - 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the landlord filed application for dispute resolution within 15 days of the tenancy ending on March 13, 2009, and therefore, the landlord is not liable or obligated to compensate the tenant for double the security deposit under Section 38(6).

As to the landlord's claim:

I find the tenant's attempt to return the painted walls, and thus the rental unit, to an acceptable condition or state for new tenants was lacking, and that this deficiency formed the landlord's determination to repaint all the walls of the rental unit. I find that once the tenant was permitted to repaint the wall issues himself, there was a preponderance that if the work was satisfactorily done by the tenant that the remaining walls would have sufficed with only cleaning.

The landlord is not requesting compensation to repaint the entire rental unit. The landlord's claim represents one sixth of the cost to the landlord, which, on preponderance of the evidence forwarded by both the tenant and the landlord, I find,

reasonably represents the cost of repainting those areas for which the tenant was responsible to properly remedy in the first place.

I reduce the landlord's claim by one half, in consideration of normal wear and tear, and I **find** the landlord is entitled to compensation in the amount of **\$318.75**.

As the landlord's claim and the tenant's claim each have partial merit, I find that each is entitled to partial recovery of \$25 of the filing fee for their application, thus this portion of the parties' claim effectively cancels that of the other.

Conclusion

I **order** that the landlord is permitted keep **\$318.75** from the security deposit and accrued interest (totalling \$660.05) in satisfaction of the landlord's monetary claims.

I **grant** the tenant a Monetary Order for the balance of the security deposit and interest in the amount of **\$341.30**

Dated June 15, 2009