

Dispute Resolution Services

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

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application filed by the landlord.

Both parties were represented in the hearing and each was given an opportunity to participate in the conference call proceedings and each provided submissions and affirmed testimony to this hearing.

The landlord seeks a monetary order for:

- money owed or compensation for damage or loss under the Act, regulation or tenancy agreement keep all or part of the security deposit in partial satisfaction of the monetary claims
- damage to the rental unit
- to recover the filing fee from the landlord for this application in amount of \$50

The tenant vacated the rental unit April 01, 2009.

The landlord amended their claim during the hearing.

The amended and relevant claim is as follows:

- \$2037 for all new flooring (carpeting and vinyl) for entire suite.
- \$90 for cleaning of the rental unit
- \$202 for painting
- \$640 for reconstruction of patio area

Issue(s) to be Decided

Has the landlord established, on a balance of probabilities, that they have suffered a loss due to the tenant's neglect or failure to comply with the Act? And, if so established, did the landlord take reasonable steps to mitigate the loss?

The burden of proving loss and damage rests on the respective claimant (landlord), and, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Therefore, is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started July 15, 2007. The tenant vacated the suite April 01, 2009. A deposit of \$1,000.00 was collected at the outset of the tenancy.

The landlord submits that they replaced all flooring in the unit. It is undisputed that the carpeting in the unit was at least six years old and had endured water damage over the years, as well as staining. The tenant added, and was undisputed by the landlord, that both bedrooms had sustained periods of "standing water" in both bedrooms from water ingress (leaking into the unit from exterior) during the tenancy – which resulted in some mold growth and attempts by the landlord to remedy the water ingress problem. The move out inspection report indicates the carpeting in both bedrooms is "marked from leaks", and carpeting in the dining room has, "cig (cigarette) burn marks from before".

The landlord's claims for cleaning of the unit and for repainting of portions of the unit are undisputed by the tenant.

The landlord claims costs for dismantling and reconstructing the outdoor patio area, which both the landlord and tenant agree had deterioration of wood enclosures and the soil area had been used by three dogs of the tenancy. The landlord claims that an amount of dog excrement had to be removed along with the soil area. The tenant disputes the landlord's cost testifying that the patio area was already in an advanced state of decay when they moved in. The landlord representative stated that the patio is now, "as new", and has been redesigned to a different and better standard than during

the tenancy – including material not present before the renovation. Further, the landlord representative has been with the landlord since February and cannot attest as to the condition of the patio at the outset of the tenancy. The condition inspection report for the status of the balcony/patio indicates a check mark for both the move in and move out condition – which according to the landlord representative means no issues were noted.

Receipts submitted are for costs of painting, carpet replacement, and a running ledger of costs for the unit from 2004 to 2009, which attribute costs of \$169.84 to the period of *this* tenancy.

Analysis

I have reviewed all submissions and reflected on all the testimony and claims of the parties, and given full regard to the parties' submissions.

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss.

Simply stated, the claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the

claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

There is evidence that the flooring in the unit was in a state of some deterioration at the outset of the tenancy, and that in addition to normal wear and tear, the carpeting, especially, endured water damage issues. Although the replacement of carpeting is understandable, on the balance of probabilities it cannot be attributed to the tenant. On the preponderance of the evidence **I find** the landlord's claims for the complete replacement of all flooring in the rental unit does not meet the test for damage and loss claims. Therefore, **I dismiss** the landlord's claim for carpet replacement without leave to reapply.

On the preponderance of the evidence **I find** the landlord's claims for the renovation of the patio area does not meet the test for damage and loss claims, and **I dismiss** this portion of the landlord's claim without leave to reapply.

I find the landlord is entitled to costs for painting and cleaning totaling **\$292**.

As the landlord is partially successful in their application, the landlord is entitled to partial recovery of the filing fee in the amount of \$10 bringing the landlord's total entitlement to **\$302**.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- **a landlord's application to retain all or part of the security deposit**, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's entitlement does not exceed the amount of the security deposit it is appropriate that I order the return of any balance of the tenant's security deposit of \$1000 with interest of \$15.71.

Therefore; **I so order** and I grant the tenant a Monetary Order in the amount of **\$713.71**.

Conclusion

The tenant is issued a Monetary Order under Section 67 of the Act for **\$713.71**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 06 , 2009