



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial compensation of the claim. Three agents for the landlord, one tenant and counsel for the tenant all participated in the teleconference hearing.

Issues(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 1, 2005. On July 30, 2005 the tenant paid the landlord a security deposit of \$462.50. The landlord and the tenant conducted a joint move-in inspection and signed the inspection report on August 2, 2005. The landlord and the tenant conducted a joint move-out inspection on July 28, 2009, and the tenancy ended on that date.

After the tenant moved out the landlord noted several items of damage in the rental unit and has claimed monetary compensation for the damage. In the hearing the tenant acknowledged the landlord's claim of \$330 for cleaning, and the landlord and tenant agreed to settle the claim of \$2226 for carpet replacement by splitting that cost in half, at \$1113.

The remainder of the items claimed by the landlord was as follows:

- 1) \$422.11 for replacement of the fridge and freezer doors – the fridge was purchased new in 2007. The doors were badly warped at the end of the tenancy. The amount claimed is a quote for replacement of the doors; however, the owner of the rental unit decided to replace the fridge rather than repair it.
- 2) \$100 for damage to the countertops in the kitchen and bathroom – the tenant caused unsightly damage to the countertops. The landlord acknowledged that the countertops were old, and that they did not replace the countertops.
- 3) \$1569.75 for painting the walls – the tenant damaged the walls in several places, with chips, scuff marks and particularly numerous holes from thumbtacks or staples. The walls were also stained, apparently from excessive smoking in the unit or burning of candles without proper ventilation. The unit had previously been painted in 2005. Because of the damage to the walls, extensive patching and two coats of paint were required. A witness for the landlord, the contracted painter, gave testimony that there were between 600 and 1000 holes in the walls and ceiling in the living room, and patching and a second coat of paint were required to correct the damage. The landlord is only claiming for patching, priming and one coat of paint for the walls of the unit, the bathroom ceiling and the painted baseboard and heaters. The landlord acknowledged that the rental unit has a wood-burning fireplace.
- 4) \$462 for painting the textured ceilings – the textured ceiling in the living room was damaged by numerous staples that the tenant did not remove at the end of the tenancy. When the staples were removed it caused damage to the ceiling. After the living room ceiling was painted it was a different colour from the ceiling in the rest of the unit and so all of the ceiling had to be painted.

- 5) \$81.77 for light bulbs – there were burnt out light bulbs at the end of the tenancy. The landlord is a property management company whose employees are not insured to do the work required to change light bulbs, so the landlord hired a maintenance person to purchase light bulbs and replace them. The invoice shows \$24.90 plus GST for the cost of light bulbs, \$52.50 for labour and a “trip charge,” and \$3.87 for GST.

The response of the tenant was as follows:

- 1) the fridge – the slight warping visible in the landlord’s photographs shows the condition of the fridge when it was delivered and came out of the box.
- 2) the kitchen and bathroom countertops – the tenant’s understanding was that they were the original countertops from approximately 1970.
- 3) painting of the walls – the tenant acknowledged that there were some small holes in the walls caused by thumbtacks, but the landlord has exaggerated the number of holes and the amount of damage to the walls. The tenant submitted that the landlord’s photographs do not show the amount of damage that the landlord claimed, particularly the number of holes claimed by the landlord’s witness. The tenant further submitted that any smoke damage to the walls would have been caused by the fireplace and was normal wear and tear.
- 4) ceiling painting – the tenant acknowledged that there was a small gathering of staples in the living room ceiling that she did not remove before vacating.
- 5) Light bulbs – the tenant submitted that the charge for the light bulbs is excessive.

Analysis

Based on the tenant's acknowledgement of the \$330 claim for cleaning and the agreement of the tenant and the landlord for \$1113 for the carpets, I grant the landlord these amounts.

In regard to the remainder of the landlord's claims, I find as follows:

- 1) The fridge – the landlord has not provided any evidence that the warping of the fridge and freezer doors was caused by the tenant or that it was anything other than a manufacturing defect. I find the landlord is not entitled to any compensation for this item.
- 2) The kitchen and bathroom countertops – the landlord did not provide the exact age of the countertops, but acknowledged they were “old.” According to the Residential Tenancy Policy Guidelines, the average age of countertops is 25 years. Therefore, if the countertops were more than 25 years old they would have depreciated to the point where they had no monetary value whatsoever. Furthermore, the landlord did not replace the countertops and therefore did not incur any loss. I therefore find the landlord is not entitled to any compensation for this item.
- 3) Painting of walls – while the landlord's witness may have exaggerated the number of holes in the walls and ceiling, I find no reason to doubt his testimony that the walls required patching and a second coat of paint to correct the damage. However, the landlord has provided no evidence to contradict the tenant's submission that any smoke damage resulted from normal use of the fireplace. Further, the quote submitted by the landlord for painting the walls included painting of the baseboards and heaters, which the landlord did not establish were damaged in any way or required two coats of paint. I therefore

find that the landlord is not entitled to the full amount claimed for repairing and painting the walls. The quote for painting and repairs only gave a total amount for the work, and did not delineate the repair costs or painting. Further, the landlord's evidence did not make it clear whether the alleged smoke damage precipitated the need for a second coat of paint. The evidence of the landlord and the landlord's witness focussed on the damage to the living room, and did not clearly establish that all of the rooms required two coats of paint. I therefore reduce the landlord's claim for repairing and painting the walls by 50 percent, to \$784.88.

- 4) Painting of ceiling – the average life of paint, as set out in the Residential Policy Guidelines, is four years. The evidence of the landlord was that the ceilings required one coat of paint. I find that the landlord is not entitled to the cost for repainting the ceiling. I accept that part of the work done by the contractor to prepare the ceiling for painting must have required labour to remove staples; however, the invoice for the work done on the ceilings does not provide a breakdown of that labour or the hourly rate for the contractor's labour. I therefore grant the landlord \$50 for the labour to remove the staples from the ceiling.
- 5) Light bulbs – it is the tenant's responsibility to replace light bulbs during the tenancy. I therefore find that the landlord is entitled to the amount claimed for the cost of the light bulbs, in the amount of \$26.15. However, the landlord is responsible for ensuring a rental unit has light bulbs installed at the outset of any tenancy, and I do not accept the landlord's reason for their inability to carry out their duty as a landlord. Further, the landlord could have mitigated their cost by purchasing the light bulbs themselves. The landlord is not entitled to the amount claimed for the labour and call out charge of the maintenance person hired to purchase and change the light bulbs.

The landlord is entitled to a total monetary award of \$2304.03. As the landlord's claim was partially successful, I find they are entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

The landlord is entitled to a total claim of \$2329.03. I order that the landlord retain the security deposit and interest of \$478.87 and I grant the landlord a monetary order under section 67 for the balance of \$1850.16.

Dated: December 8, 2009.

Dispute Resolution Officer