

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage to the unit, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on May 1, 2002. By the end of tenancy, monthly rent was \$564.00, and was payable in advance on the first day of each month. A security deposit of \$237.50 was collected on May 1, 2002. A move-in condition inspection and report were completed by the parties at the outset of tenancy.

By letter dated October 6, 2009, the tenant gave notice to the landlord of his intent to vacate the unit by November 15, 2009. Subsequently, the tenant made a rent cheque payable to the landlord in the amount of \$282.00, or one half month's rent for November 2009. Following this, the landlord issued a 10 day notice to end tenancy for unpaid rent dated November 1, 2009. Thereafter, the tenant made no further payment toward rent, vacated the unit on or about November 12, 2009, and together the parties completed a move-out condition inspection and report on or about November 12, 2009. New renters took possession of the unit effective December 1, 2009.

While the parties undertook the joint completion of the move-in condition inspection and report, & the move-out condition inspection and report, they nevertheless present varying perspectives on the condition of the unit at the beginning and at the end of the tenancy.

In summary, the landlord seeks compensation as follows:

\$ 282.00	Unpaid rent to November 31, 2009
\$ 141.75	carpet cleaning
\$ 750.00	replace living room carpet
\$1,066.41	painting and cleaning
\$ 50.00	filing fee
\$ 18.22	service fee

Total: \$2,308.38

The tenant does not dispute the landlord's application to recover the cost of bedroom carpet cleaning in the amount of \$141.75.

As to the remaining items in dispute, while the parties explored possible resolution during the hearing, no settlement was reached. That said, while the tenant stated that he had made efforts to leave the unit in a reasonable state of cleanliness at the end of tenancy, he acknowledged there may have been some additional cleaning required.

Further to both of the condition inspection reports, evidence submitted by the landlord includes, but is not necessarily limited to invoices / receipts, photographs, various correspondence between the parties during the tenancy, incident reports and so on.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part, as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Notwithstanding the landlord's issuance of a 10 day notice to end tenancy for unpaid rent dated November 1, 2009 (after receiving payment for only one half month's rent for November 2009), the tenant's method of initiating the end of tenancy does not comply with the above statutory provisions. Accordingly, I find the landlord has established entitlement to the balance of rent due for November 2009 in the amount of \$282.00 (\$564.00 - \$282.00).

As for the living room carpet, the landlord's best recollection is that it was installed 3 or perhaps 4 years prior to the commencement of this tenancy. He could not be certain. The tenancy itself lasted nearly 7 + one half years, and during that time the carpet was not replaced. The age of the carpet is therefore thought to be within the range of from 10 to 12 years. The landlord takes the position that the lifespan of the carpet would have been longer had the carpet been properly maintained during this tenancy.

Pertinent to this aspect of the dispute, Residential Tenancy Policy Guideline # 37 includes Table 1, which sets out the "Useful Life of Work Done or Thing Purchased." Where it concerns "carpets," the useful life is considered to be 10 years.

Having considered the documentary evidence, testimony of the parties, and the above guideline, I find on a balance of probabilities that by the end of this tenancy the carpet

had reached the end of its useful life. Accordingly, I dismiss the landlord's application to recover the cost of replacing the living room carpet in the amount of \$750.00.

A breakdown of the landlord's claim for \$1,066.41 in regard to painting and cleaning, is set out in his exhibit marked # 47. This exhibit also includes reference to miscellaneous costs for "general repairs." The component parts of this aspect of the claim, as well as the relevant legislation and Residential Tenancy Policy Guidelines are set out below.

- i) \$280.45 paint product
- ii) \$525.00 painting labour
- iii) \$180.00 cleaning labour
- iv) \$80.96 extras required for repair & replacement

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part, as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, ...

Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and provides in part:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

While it appears that the parties have differing views on what constitutes a “reasonable” state of cleanliness, as previously stated, the tenant acknowledged that there were some areas in the unit which may have fallen short of achieving the threshold of a “reasonable” level cleanliness. Having considered the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has established entitlement to \$90.00, which is half the amount claimed for cleaning labour.

Pursuant to Residential Tenancy Policy Guideline # 37, as above, the “Useful Life” of interior paint is defined as 4 years. The landlord testified that he was uncertain how long it had been before this tenancy began since the unit was painted; he speculated it may have been 1, 2 or perhaps 3 years.

Without the landlord’s permission, the tenant undertook to paint the interior of the unit during the early stages of the tenancy. The landlord objected to the tenant’s choice of paint and painting style, however, I find that the interior paint was approximately 7 years old at the end of tenancy. The evidence is that the tenant undertook to patch holes around and about the unit before the end of tenancy, even while he did not sand the patches or otherwise prepare the walls for a new coat of paint.

On a balance of probabilities, I find that the tenant’s treatment of the walls reflects neither, deliberate damage nor neglect. Further, I find that the useful life of the interior paint had been reached by the end of tenancy. Accordingly, I dismiss the landlord’s claim for costs associated with paint product and painting labour in the amount of \$805.45 (\$280.45 + \$525.00).

This brings me to “extras required for repair & replacement” in the amount of \$80.96. The landlord’s evidence includes detailed receipts showing related purchases. After reviewing the evidence, however, I am unable to conclude that the “repair & replacement” deficiencies have been sufficiently noted on the move-out condition inspection report; further, I am persuaded that some of the need for repair and replacement arises out of aging and normal wear and tear within the unit. Accordingly, I

dismiss this aspect of the landlord's claim of \$80.96, with the exception of a cost incurred for "new electrical plates to replace the ones which been painted over in the green" in the amount of \$8.41.

Section 72 of the Act addresses Director's orders: fees and monetary orders. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associate with litigation to either party to a dispute. Accordingly, the landlord's application to recover the cost of service in the amount of \$18.22 is dismissed.

I find, however, that as the landlord has achieved some success in his application, he is entitled to recover the \$50.00 filing fee.

In summary, as for the monetary order, I find that the landlord has established a claim of \$572.16. This is comprised of \$282.00 in unpaid rent, \$141.75 for bedroom carpet cleaning, \$90.00 for cleaning labour, \$8.41 for new light switch covers, in addition to the \$50.00 filing fee. I order that the landlord retain the security deposit of \$237.50 plus interest of \$8.41, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$326.25** (\$572.16 - \$245.91).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$326.25**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 29, 2010

Dispute Resolution Officer