



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, 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 satisfaction of the claim. Both parties participated in the conference call hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2006 when the tenant sublet the rental unit from the landlords' previous tenant. In 2007 the tenant entered in to a tenancy agreement directly with the landlords. A security deposit of \$682.50 was paid in 2006. The tenancy ended on May 31, 2009 and at that point, the tenant was paying \$1,410.00 per month in rent.

The landlords testified that the rental unit had last been painted in 2006 prior to the beginning of the tenancy. The landlords claimed that the unit had to be completely repainted at the end of the tenancy as there was damage to the walls of the unit and that because the tenant did not grant them access to paint in the last month of the tenancy, the landlords were unable to complete painting until the beginning of June and were unable to re-rent the unit until the end of June. The landlords seek recovery of the cost of painting the unit as well as lost income for the 26 days in June in which the rental unit was unoccupied. The landlords claimed that the tenant refused to sign a

condition inspection report at the end of the tenancy. The landlords provided a copy of an invoice showing that they paid \$720.00 for painting, but provided no photographs or a copy of either the move-in condition inspection report or the move-out condition inspection report.

The tenant testified that there were some screw holes on the walls which had created to hang a whiteboard and a coat rack but disputed that the entire unit required repainting. The tenant further testified that he made the rental unit available for painters to repaint the living room during the last month of the tenancy as well as for the landlord to show the unit to prospective tenants.

Analysis

In order to establish their claim the landlords must prove on the balance of probabilities that the damage to the rental unit could be characterized as damage which was beyond reasonable wear and tear. In light of the tenant's disagreement as to the extent of the damage and in the absence of photographs or other corroborating evidence to show that the damage to the walls was not the result of reasonable wear and tear, I find that the landlords have failed to prove their claim. I note that Residential Tenancy Policy Guideline #37 identifies the useful life of paint as 4 years and that 3 years of that useful life had expired in any event. As for the landlords' claim for loss of income for 26 days in June, I find that the tenant had no obligation to grant the landlords access to repaint the unit during the last month of his tenancy. The landlords have not proven that the rental unit required repainting as a result of excessive damage and accordingly their choice to repaint the rental unit at the end of the tenancy which delayed re-renting the unit cannot be laid at the feet of the tenant. Although there was some discussion about the condition of the rental unit and required cleaning, the landlords provided no photographs or other corroborating evidence to show the condition at the end of the tenancy and I am therefore unable to find that the tenant failed to adequately clean thereby preventing the unit from re-renting sooner. The landlords' claim is dismissed in its entirety.

As the landlords' claim against the security deposit has been dismissed, I order that the landlords forthwith return to the tenant the \$682.50 security deposit and the \$21.82 in interest which has accrued. I grant the tenant a monetary order under section 67 for \$704.32. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords' application is dismissed. The landlords are ordered to return the security deposit and interest to the tenant.

Dated: January 26, 2010
