

Decision

Dispute Codes:

<u>MND</u>	Monetary Order for Damage to the Unit/Site/Property
<u>MNDC</u>	Money Owed or Compensation for Damage or Loss
<u>MNSD</u>	Keep All or Part of the Security Deposit
<u>FF</u>	Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim. The claim was for \$2,091.00. Both the landlord and tenant appeared and each gave testimony.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit for damage to the unit and for money owed or compensation for damage and loss under the Act.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss and to retain the security deposit. This determination is dependant upon answers to the following questions:
 - a) that there was damage or loss caused by the tenant in violation of the Act
 - b) a verification of the actual costs to repair the damage
 - c) that the landlord did what ever was reasonable to mitigate the costs

Background and Evidence

The tenancy began on October 29, 2006, ended in September 2009 and rent was \$1,350.00 per month, with a deposit of \$625.00. No tenancy agreement, move-in condition inspection report or move-out condition inspection report was submitted into evidence. However, the landlord testified that the unit was in good repair at the start of the tenancy and that some areas of the unit had been freshly painted, including a room re-painted at the tenant's request with materials purchased by the landlord.. The landlord testified that the unit was left in need of numerous repairs requiring repainting and replacement microwave. Submitted into evidence were photographs of the unit showing the damage and copies of invoices for the materials and labour.

Microwave

The landlord was claiming \$199.00 for the over-range microwave which was missing the handle and had a crack in the door. The landlord was also claiming reimbursement for the cost of installation for the microwave in the amount of \$175.00. The landlord testified that the handle was damaged by the tenant and the tenant should pay to replace the unit, which was purchased in 1995 or 1996.

The tenant disputed the landlord's claim and testified that the handle came off early in the tenancy through normal use. The tenant stated that when the problem was originally reported to the landlord as a repair issue, the landlord had offered to purchase a new counter-top microwave to replace the broken oven or to supply a replacement door. The tenant stated that they were never aware that there was a crack in the door of the microwave. The tenant had submitted an affidavit stating that the microwave matter did not concern the landlord during the "walk through" at the end of the tenancy. The tenant disagreed with the entire claim and felt that nothing was owed.

Light Fixture

The landlord was claiming \$19.99 to replace a damaged light over the kitchen sink which was missing the cover. The light was approximately 15 years old but was in good

working order and complete when the tenant took possession. The tenant disputed the claim on the basis that the cover was loose and kept falling off . the tenant stated that the cover had subsequently been misplaced.

Paint and Repairs

The landlord had submitted an invoice indicating that \$1,800.00 was charged for repainting the unit, removing wallpaper , patching and installing the microwave. There was no cost breakdown by job, hours or materials. However, the landlord testified that approximately \$175.00 was dedicated to the microwave issue, which was dealt with earlier in this decision, and \$300.00 was for wallpaper removal and repainting of the bathroom, for which the landlord agreed the tenant was not responsible. The remaining \$1,325.00 was being claimed for the re-painting of the unit in addition to some minor patching of nail/screw holes in 4 doors. The landlord testified that the tenant put holes in the drywall and damaged the finish by writing on the wall. Photos of this were referenced. The landlord testified that she told the tenant not to patch drywall holes, except where the gate had been, as she was intending to fill and touch-up the spots with paint. However, because the tenant had patched numerous holes of every room, the landlord was forced to have professionals repaint incurring extra costs.

The tenant did not agree with the claim and testified that he had restored the walls where there had been damage in preparation for re-painting. The tenant added that he would have done the touch- ups had the matching paint been available. The tenant said that the landlord's instruction not to patch the walls came too late. The tenant's position was that the paint finish in most of the unit was over 6 years old and the repainting was a maintenance issue for which the tenant would not be responsible.

Remaining Claims

The parties were in agreement that the tenant should reimburse the landlord for the \$14.55 cost of melamine paint to repair the cabinet doors, \$3.47 to replace knobs and \$2.00 for the cost of a lost key to the shed.

Analysis

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and order payment in such circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- [1] Proof that the damage or loss exists, and that it happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- [2] Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- [3] Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to 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 tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced

item, reference will be made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

To apply the test for damages, It must first be determined whether there was a violation of the Act by the tenant. I find that section 32 of the Act contains provisions regarding both the landlord's and the tenant's obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit caused by the actions or neglect of the tenant, this section of the Act specifies that a tenant is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In regards to the landlord's \$374.00 claim for the microwave replacement and installation, I find that the landlord was aware of the damage approximately 3 years prior to the end of the tenancy and never approached the tenant in regards to being at fault or paying for the damage. In any case, I find that the average useful life of a microwave oven is set at 10 years and this model was older than that. Accordingly I find it reasonable that the defect in the microwave occurred from normal wear and tear given its age and the tenant's actions would not constitute a violation of the Act. I find that the claim failed element 2 of the test for damages under these circumstances. Moreover, even if I found that the damage was caused in excess of wear and tear, the pro-rated replacement value of the microwave would be nil due to depreciation. Accordingly the landlord's claim for \$199.00 for the purchase and \$175.00 for the installation of the microwave must be dismissed.

I find that the \$19.99 claim for the replacement light fixture must also be dismissed as the average life expectancy of a light is 15 years and therefore the fixture was due for replacement by the landlord.

In regards to the landlord's claim for compensation for the \$1,325.00 re-painting of the unit, I find that, while the tenant did damage the walls, this damage was rectified with the exception of repainting the affected areas. I find that the extent of the patching that was required would probably necessitate a complete repainting job rather than touch-up painting. Under section 37 of the Act, the expectation is that the tenant must return the unit in a reasonably clean and undamaged state as when the tenant moved in, which I find was not done in this case. I find that all elements of the test for damages have been met and this would call for compensation to the landlord. That being said, I find that the age of most of the paint finishes within the rental unit was greater than four years, which is the useful life expectancy of an interior paint finish in a rental unit. Therefore the pro-rated value of re-painting would be nothing and the need for re-painting the unit would have transformed into a maintenance issue.

However, I acknowledge that there was one room apparently repainted at the start of the tenancy at the tenant's request, the cost/labour of which was shared by both parties. Also, according to the landlord, the kitchen and bath were recently painted just prior to the tenancy, about 3 years ago. In recognition of the above, I find that the landlord is entitled to a token amount of \$60.00 for 25% of the estimated cost of this re-painting.

The contractor also filled some minor screw holes in the wood trim and four doors and I find that reasonable compensation for this would be \$20.00.

I find that the tenant agreed to reimburse the landlord for the \$14.55 cost of melamine paint to repair the cabinet doors damaged by the tenant, as well as the \$3.47 to replace knobs and the \$2.00 for the cost of the key to the shed.

Based on the above, I find that the landlord is entitled to total monetary compensation of \$125.02 comprised of \$60.00 for repainting, \$20.00 for repairs to trim and doors, \$14.55

for the cost of the melamine paint, \$3.47 for knobs and screws, \$2.00 for the key and \$25.00 for half the cost of the application.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation in the amount of \$125.02 comprised of costs that satisfy the test for damages. I order that the landlord retain this amount from the tenant's security deposit and interest of \$644.48, in satisfaction of the claim and I grant a monetary order in favour of the tenant for the remainder in the amount of \$519.46. This order must be served on the landlord and may be filed in Small Claims Court for enforcement if necessary.

The remainder of the landlord's application is dismissed without leave.

February 2010

Date of Decision

Dispute Resolution Officer