

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, to keep all or part of the security deposit, for damage to the unit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 6, 2009. The Tenant is deemed to be served the hearing documents on November 11, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord attended, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order a) for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement, and b) to keep all or part of the security deposit, and c) for damage to the unit under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on July 1, 2007 and ended on October 31, 2009 after the Tenant provided the Landlord with one month written notice to end the tenancy. The Tenant's subsidised rent was payable on the first of each month in

the amount of \$191.00 and the Tenant paid a security deposit based on the market value in the amount of \$450.00 on July 31, 2007. A move-in inspection was completed in the presence of the Tenant on July 1, 2007 and the move-out inspection form is dated October 31, 2009 in the absence of the Tenant.

The Landlord testified and referred to her documentary evidence to support that two memos were left for the Tenant requesting her to contact the Landlord to schedule the move-out inspection. A Notice of Final Opportunity to schedule a condition inspection was posted to the Tenant's door listing October 31, 2009 at 1:00 p.m. as the move-out inspection time.

The Landlord provided testimony that they did not commence the cleaning and repairs of the rental unit until the morning of October 31, 2009. The Landlord argued that the Tenant was coming and going from the rental unit throughout the month leaving the unit vacant for several days. The Landlord stated that photos submitted into evidence were taken on October 31, 2009 and claims the Tenant vacated the rental unit leaving her computer monitor, computer desk, and mirrored dresser behind.

I questioned the Landlord about the Tenant's note submitted in the Landlord's evidence which is dated October 30th at 5:00 p.m. where the Tenant notes that she attended the rental unit and noticed the Landlord has entered the unit and initiated cleaning. The Landlord stood by her initial testimony claiming they did not enter the unit to clean until the morning of October 31, 2009 until I questioned the Landlord about the carpet cleaning invoice which lists the date the work was performed as October 29, 2009 and the cleaning invoice which shows that the work was performed by the resident manager starting on October 30, 2009. The Landlord then changed her testimony and stated that she had permission from the Tenant to begin the cleaning.

The Landlord is seeking a monetary claim of \$635.70 which is comprised of the following:

- 1) \$150.00 to repair the damaged walls. The Landlord confirmed that she is seeking compensation to patch the holes that were left in the walls, as supported by the inspection reports and photos and that she is not claiming the cost to repaint the unit.
- 2) \$154.15 to purchase (\$129.15) and install (\$25.00) an interior bedroom door. The Landlord was not able to provide evidence of the age of the existing door. The Landlord stated that they have to replace these doors on a regular basis and provided an invoice of when some doors were pre purchased and kept in stock back in July 2009.
- 3) \$141.75 for Carpet Cleaning which is supported by an invoice dated October 29, 2009.
- 4) \$79.80 to replace the bedroom window screen and the patio door screen. The Landlord testified that the exterior envelope of the building was remediated in 2006 at which time all the units were provided with new screens.
- 5) \$110.00 for cleaning the rental unit. The Landlord stated that she had originally claimed \$220.00 for the cost of cleaning however she had a telephone conversation with the Tenant this morning whereby the Landlord agreed to reduce her claim for the cost of the cleaning to \$110.00.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides 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 the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

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 repair or replacement cost by the depreciation of the original item.

- 1) The evidence supports that the walls were damaged during the Tenant's tenancy and the Landlord suffered a loss in the amount of \$150.00 to repair the damage. I find that the Landlord has proven the test for damage or loss, as listed above and I approve their claim of \$150.00.
- 2) The *Residential Tenancy Policy Guidelines* provide for the useful life of an interior door to be approximately 20 years. While the evidence supports there has been damage caused to the bedroom door, there is no evidence to support the actual age of the door. Based on the aforementioned I have estimated the door to be approximately ten years old and I approve the Landlord's claim in the amount of \$77.08 (50% of \$154.15)
- 3) The Landlord's testimony confirms the exterior screens were replaced in 2006 and two of the screens were damaged and had to be replaced at the end of this tenancy. I find the Landlord has proven the test for damage or loss as listed above and the useful life of windows screens are approximately 15 years; therefore I approve the Landlord's claim in the amount of \$61.18 ($\$79.80 \times 11.5/15$).

I find the evidence supports that the Tenant paid the full month of October's rent and had possession of the rental unit until October 31, 2009 at 1:00 p.m.; that the Tenant attended the rental unit on October 30, 2009 to complete the cleaning and found that the Landlord had already had the carpets cleaned and the Landlord had started to clean the remainder of the rental unit.

- 4) Based on the aforementioned I find the Landlord entered the rental unit in contravention of the Act and had the carpets cleaned prematurely; there is no proof to support that the Tenant was not intending to clean the carpets or requested the Landlord to have the carpets cleaned on her behalf; therefore I dismiss the Landlord's claim of \$141.75 for carpet cleaning.
- 5) As per the above the Landlord entered the rental unit prior to the end of the tenancy and took it upon herself to clean the rental unit. The evidence supports that the Tenant attended the rental unit on October 30, 2009 to begin cleaning therefore I dismiss the Landlord's claim of \$110.00 for cleaning.

The Landlord has been partially successful with her claim therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Wall repairs	\$150.00
Bedroom door replacement and installation	77.08
Bedroom window screen and patio screen	61.18
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$338.26
Less Security Deposit of \$450.00 plus interest of \$9.64	- 459.64
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$121.38

The Landlord is hereby ordered to refund the balance of the Tenant's security deposit in the amount of \$121.38 to the Tenant, in accordance with section 72 of the *Residential Tenancy Act*.

The Landlord acknowledged that the possessions left behind by the Tenant are currently being held in storage. The Landlord is advised to follow the requirements under section 24 of the *Residential Tenancy Regulation* before disposing of any of the Tenant's personal property.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$121.38**. The order must be served on the respondent and is enforceable through the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 16, 2010.

Dispute Resolution Officer