



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the unit, site or property and to recover filing fee from the tenant for the cost of this application. The tenancy had already ended.

The landlord and tenant appeared and gave testimony in turn.

All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

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

- Whether the landlord is entitled to a monetary Order under section 67 of the *Residential Tenancy Act* for damages or loss.
- Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the Act by establishing on a balance of probabilities:
 - a) that there was damage
 - b) that this damage was caused by the tenant during the tenancy and in violation of the Act
 - c) a verification of the actual costs to repair the damage

- d) that the landlord fulfilled the obligation to take reasonable measures to mitigate the costs

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The tenancy began in January 2009 and ended on October 31, 2009. The tenant paid a security deposit of \$600.00 at the beginning of the tenancy. A copy of the tenancy agreement and copies of two-page move-in and move-out inspection reports were submitted into evidence. The landlord had also submitted copies of invoices for repairs, painting and supplies into evidence.

The landlord testified that when the tenant vacated the unit on October 31, 2009, the tenant left the unit in an unsatisfactory condition. The landlord stated that the tenant failed to show up for the scheduled move-out condition inspection at noon on October 31, 2009 and the form was subsequently reviewed with the tenant off site, at which time the tenant signed the report.

According to the landlord, the unit was freshly painted during the tenancy. However, when the tenant moved, there were holes left in the wall including two larger holes in the dining room and two in the bathroom. These holes necessitated patching and repainting of the damaged areas at a cost of \$360.00 for the labour and \$110.76 for materials. The labour and material costs were reflected on the invoice dated November 1, 2009 and there were also two receipts for purchase of paint dated November 22 and November 23, 2009. The landlord is claiming \$470.76.

The landlord was also claiming cleaning charges for the stove and refrigerator in the amount of \$25.00. The landlord stated that shortly after the new occupants arrived after the tenant had vacated, they reported a problem with the toilet. The landlord attributed this damage to the tenant and is claiming the cost of \$93.45.

The landlord testified that although there were other damages and costs relating to the rental unit these additional claims were not being pursued. The total amount of the claim is \$588.21.

The tenant disputed the claim for the painting on the basis that there were only some small pin holes left and she was not aware that the landlord required them to be patched and repainted. The tenant did not agree with the charges for plumbing repairs or maintenance and pointed out that the problem occurred after she had departed. In regards to cleaning the oven, the tenant accepted the landlord's claim of \$25.00.

In regards to the move-in and move out inspection reports, the tenant testified that only one page of the four-page report was ever presented for her signature and the items of concern shown on page two of the move-out condition report were never agreed to.

The tenant also pointed out that the landlord had attempted to cash a post-dated rent check for November 2009, after the tenant had vacated resulting in NSF charges for the tenant and problems with the bank.

Analysis: Damage Claim

In regards to the landlord's monetary claim for damages to the unit, I note that, in order to support compensation under section 67 of the *Act*, the landlord had the burden of proving the following:

- (1) Proof that the damage or loss existed and proof that this damage or loss 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.

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. I find that the landlord's photographs verify that there was damage and cleaning needed. In regards to the \$25.00 cost of cleaning, I find that the parties were in agreement that this amount was owed and the landlord is entitled to this amount.

I find that the Move-In and Move-Out condition inspection report that was submitted appeared to be a partial report and I find that the second page was not signed by the tenant. I find that the report did not adequately verify that these two parties agreed on the "before and after" condition of the rental unit. Accordingly, I find this evidence flawed and must rely on the verbal testimony given by each party.

In regards to the landlord's claim of \$470.76 for repainting, I find that although both parties did agree that some holes were left in the wall, the landlord's testimony that these minor deficiencies had resulted in such relatively large costs was not sufficiently supported by evidence. I find that the letter from the new occupant indicated that for the living room, the master bedroom and master bathroom, "*the whole room was painted*" and the letter also stated that the kitchen and entrance walls were painted. It is clear that the charges for painting involved a larger portion of the rental unit than merely the small areas of damage described by the landlord attributed to the tenant. I find that in order to meet element 3 of the test for damages, the landlord should have only presented the expenditures for the touch-up costs, rather than the costs for the major repainting job. I also find that there were irregularities pertaining to the invoices that purported to verify the charges. Given the above, I find that the landlord has failed to meet the burden of proof necessary to support a claim that the tenant must be held accountable for the painting costs. Accordingly, I dismiss the portion of the landlord's application relating to the \$470.76 cost of repainting.

In regards to the charges for problems with the toilet, I find that plumbing fixture maintenance normally falls to the landlord and under section 32, and a tenant is not to be held responsible for matters that may fall into the category of normal wear and tear.

I find that, while it is in the realm of possibility that a clogged waste drain may have been caused by damage or abuse from a tenant, it may also be the result of longer-term narrowing of the pipes that predated the tenancy or even some other malfunction not entirely within the control of the tenant. In this instance, I find that the landlord was not able to prove that the tenant had caused willful damage through negligent or reckless conduct. I find that the portion of the landlord's application relating to the \$93.45 charged for the toilet repairs must be dismissed.

Conclusion

Given the above, I find that the landlord is entitled to monetary compensation in the amount of \$25.00 for cleaning costs and is entitled to retain this amount from the security deposit leaving \$575.00 remaining.

I hereby issue a monetary order in favour of the tenant for \$575.00. The landlord must be served with the monetary order and the order may be filed with the Small Claims Court and enforced as an Order of that Court.

I hereby dismiss the remainder of the landlord's application without leave to reapply.

March 2010

Date of Decision

Dispute Resolution Officer