

## **DECISION**

Dispute Codes MND, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord requesting a monetary order for compensation under the Act and the tenancy agreement for cleaning and repairing in the rental unit, for money owed or compensation under the Act or tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and an order to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

### Background and Evidence

This tenancy began in April of 2005, with the parties entering into a written tenancy agreement. The Tenant paid a security deposit of \$405.00 on May 23, 2005. At the end of the tenancy the monthly rent was \$876.00.

The Tenant vacated the property on or about December 1, 2009, however, the Landlord alleges it has incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord alleges the Tenant cut holes in the carpet, removed doors from the cupboards, damaged the kitchen counter, poorly repaired or left holes in the walls and ceilings, cut holes in the trim around the door, and did not clean the unit prior to vacating. The Landlord claims \$3,543.49 for these items.

The Tenant submitted in his written evidence he was evicted from the rental unit following a noise complaint. He alleges he was evicted on short notice and he could not

file an Application for Dispute Resolution to dispute the Notice and he did not have time to do, "finishing touch up's" in the rental unit.

The Landlord explained in evidence that the Tenant was given a one month Notice to End Tenancy for cause due to noise complaints. The Landlord gave the Tenant the option to stay until January 1, 2010, however, the Tenant notified an Agent for the Landlord he would move out on December 1, 2009.

The Tenant admits the carpet was new when he moved into the rental unit. He alleges the carpet had normal wear and tear at the end of the tenancy, although he further admits he cut two holes in the carpet. One hole was cut after a friend of the Tenant vomited on the carpet and the Tenant claims to have saved the Landlord further damage to the underlay and subfloor by removing this section. The other hole was cut out where drinks had been spilled and a house plant had stained the area of the carpet.

The Tenant did not explain why he had removed the cupboard doors, but testified one went missing when a roommate threw it out, and he did not have time to finish installing the other doors.

The Tenant denies he poorly repaired the holes he left behind and states he used the proper brands of filler, not "bondo" as was claimed by the Landlord. He testified that the Landlord did not need to restore or retexture these walls, as a light sanding would have been enough.

The Tenant testified he cut a portion of the trim from around the door to install a sliding type lock. When he vacated he removed the lock, but did not repair the trim.

The Tenant submitted that there were hydrogen peroxide stains on the kitchen counter top, which could have been removed using warm water and a razor scraper. He explained he cut a hole in the kitchen cabinet to fit in dishwasher water lines, and this was done to code.

The Tenant argued that the Landlord had not performed a condition inspection report when he moved in or moved out, and therefore, the Landlord must return his security deposit. He also states in his written submissions that he had agreed to let the Landlord keep his security deposit to help fix the carpet.

The Landlord admits there is no copy of the incoming condition inspection report, however, the Landlord alleges the Tenant refused to participate in the outgoing condition inspection report.

The Landlord has submitted documentary evidence from witnesses who viewed the rental unit immediately after the Tenant vacated and has invoices and receipts showing comparables for the cost of the carpet and cupboards in the rental unit at the start of the tenancy.

### Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by failing to make repairs to, or to properly clean, the rental unit when he vacated. I find these breaches have caused the Landlord to suffer a loss.

While the Landlord had no evidence of the incoming condition of the rental unit with an inspection report, under the Act the Landlord may still claim for damages to, or failing to clean, the rental unit by the Tenant. Section 72 of the Act also provides that amounts may be deducted from a security deposit in the case where a Tenant must make a payment to the Landlord.

Through the evidence submitted by both parties, I find the Landlord has established the condition of the rental unit when the Tenant moved in and when he moved out. I find the Tenant left the rental unit in a condition where it could not be rented for a period of one month. I find the Tenant damaged the carpet, did not repair holes in walls or the trim in the unit, removed cupboard doors, caused the Landlord to have to make repairs and repaint walls, and failed to clean the unit as required. The Tenant was given the opportunity to stay for an extra month and could have made these repairs and cleaned the unit, however, he vacated the rental unit before he did so.

In regard to the losses to the Landlord caused by the Tenant, section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Landlord has established a total monetary claim of **\$2,684.50**, comprised of \$876.00 for loss of rent for December 2009, \$745.00 for repairing and painting the walls and cleaning the rental unit, \$763.50 for the depreciated value of the replaced carpets,

\$200.00 for paint and supplies, and \$100.00 as a nominal amount for the cupboard doors and cleaning the kitchen counter top.

I find the Landlord had insufficient evidence to prove the counter top or cupboards were damaged beyond repair or required complete replacement, and I dismiss these claims by the Landlord. I have provided a nominal amount of \$100.00 for a cupboard door and to clean the counter top.

I order that the Landlord retain the deposit and interest of **\$419.35** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$2,265.15**. This order may be filed in the Provincial Court (Small Claims) 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: May 18, 2010.

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Dispute Resolution Officer