

DECISION

Dispute Codes MND, MNSD, 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 telephone conference call hearing.

In this decision where the word “tenant” appears in the singular form it refers to the tenant M.B. who represented both tenants at the hearing.

At the hearing the tenant advised that she had not received the landlord’s evidence which was sent to her by registered mail to the forwarding address she provided to the landlord. The tenant testified that she had received notice that registered mail was waiting for her at that address, but because she does not live at that address, she had not had opportunity to pick up the mail. The tenants made the choice to give the landlord a forwarding address which was an address at which they did not reside. I find that the landlord’s evidence was properly served on the tenants and as they had opportunity to pick up the evidence, although they chose not to, I find that the evidence is admissible and accordingly I considered all of the landlord’s documentary evidence and the oral testimony of both parties in making my decision. The tenants submitted no documentary evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The parties agreed that the tenancy began on November 1, 2006 and that a \$440.00 security deposit was paid on October 2, 2006. The tenants vacated the unit on or about

November 30, 2009 and the landlord received the tenants' forwarding address on January 26, 2010. I address the landlord's claims and my findings around each as follows.

- [1] **Drapes.** The landlord seeks to recover \$80.00 as the cost of dry cleaning drapes at the end of the tenancy. The landlord entered into evidence an invoice showing that \$80.00 had been spent cleaning drapes and also entered a copy of the tenancy agreement showing a provision that the tenants were required to dry clean drapes at the end of the tenancy. The tenant acknowledged that she did not dry clean the drapes but stated that she had machine washed them. I find that the terms of the tenancy agreement are binding upon the tenants and that they were obligated to dry clean the drapes and failed to do so. I find that the landlord is entitled to recover the cost of the dry cleaning and I award the landlord \$80.00.
- [2] **Mailbox key.** The landlord testified that at the beginning of the tenancy the tenants were issued two keys to the mailbox. During the tenancy the locks to the mailbox were changed and the tenants were issued two replacement keys. Only one of the keys was returned to the landlord at the end of the tenancy. The tenant denied having been given two keys and stated that she has never had more than one key to the mailbox. The condition inspection report which was completed at the beginning of the tenancy and signed by both parties shows that two mailbox keys were issued to the tenants at the outset of the tenancy. The tenant denied having ever been given more than one mailbox key and I find that this directly conflicts with the condition inspection report in which she acknowledged having been given 2 keys at the beginning of the tenancy. I find that the condition inspection report accurately shows how many keys were issued at the beginning of the tenancy. As the tenant's recollection is faulty with respect to the number of keys issued at the beginning of the tenancy, I find it likely that it is also likely that it is faulty with respect to how many keys were issued when the locks to the mailboxes were replaced. I find that the tenants were issued two mailbox keys and failed to return one of those keys. I find the landlord's \$25.00 charge for the replacement of the key to be reasonable and I award the landlord \$25.00.

[3] **Graffiti.** The landlord seeks to recover the cost of removing graffiti from the elevator in the common area of the building. The landlord presented a photograph showing that the word “Shayne” had been carved into a beam above the elevator door. The landlord testified that the tenants’ granddaughter has a boyfriend named Shayne and that the graffiti was discovered at 11:00 p.m. on the last day of the tenancy, at a time when the landlord claimed that other people in the building were not around. The tenant insisted that no graffiti was in the elevator at all and accused the landlord of fabricating a story. The tenant further argued that there are probably many people named Shayne and that there was no evidence that any graffiti had been done by her, her husband or their guests. The landlord bears the burden of proving on the balance of probabilities that the tenants or their guests caused the damage in question. The landlord does not need to prove her case beyond a reasonable doubt, but only that it is more likely than not that the tenants caused the damage. I find the landlord’s story to be more credible than that of the tenants, particularly as the tenants vehemently denied that there was any graffiti whatsoever despite the fact that a photograph shows damage. I find that the tenants or their guests caused the graffiti in the elevator and I find the landlord’s \$100.00 charge for the cost of repairing the damage to be reasonable. I award the landlord \$100.00.

[4] **Painting.** The landlord seeks to recover \$200.00 for the cost of painting the rental unit. The landlord testified that the tenants smoked in the rental unit and that the walls were stained with nicotine. The landlord testified that the company routinely repaints rental units at the end of each tenancy, but that because of the smoke damage, a second coat of paint was required for this unit. The landlord presented evidence showing that \$150.00 was paid for paint and supplies and \$450.00 for labour. The landlord seeks to recover 1/3 of this cost. The tenant denied having smoked inside the unit and maintained that she always smoked on the balcony. The landlord’s photographs show that the walls and ceilings are discoloured and the discolouration appears to be consistent with smoke damage. I prefer the landlord’s testimony over that of the tenant and I find that the tenants caused smoke damage to occur in the rental unit. I find that additional painting was

required and I find the landlord's \$200.00 claim to be reasonable. I award the landlord \$200.00.

[5] **Carpets.** The landlord seeks to recover \$545.00 as part of the cost of replacing the carpet in the rental unit which was stained. The landlord estimated the age of the carpet at approximately 7 years and testified that the stains on the carpet could not be removed. The total cost of re-carpeting the unit was \$1,945.32. the landlord seeks to recover approximately 25% of this cost. The tenant testified that the carpet was worn and that she had cleaned the carpet periodically during the tenancy, although she acknowledged that the carpet had not been cleaned since approximately April 2009. I prefer the evidence of the landlord over that of the tenant and find that the tenants caused extreme stains to the carpet. I accept that the carpet was 10 years old at the end of the tenancy. Residential Tenancy Policy Guideline #37 identifies the useful life of carpet as 10 years. I find that the tenants deprived the landlord of 3 years or 30% of the life of the carpet. The landlord has claimed approximately 28% of the cost of the carpet, which I find to be reasonable. I award the landlord \$545.00.

[6] **Sink replacement.** The landlord seeks to recover \$477.34 as the cost of replacing the bathroom sink on two occasions. The landlord testified that the bathroom sink had to be replaced in November 2007 after the tenants damaged the fittings when they attempted to retrieve an item which had fallen into the drain. The landlord presented evidence showing that a sink was purchased and installed in the bathroom of the unit in November 2007. The landlord testified that the sink was new at the outset of the tenancy. The landlord further testified that at the end of the tenancy, the sink was chipped and had to be replaced again. The landlord's evidence shows that the sinks cost \$123.67 each and the landlord seeks a further \$125.00 for plumbing fees for each occasion in which the sink had to be replaced. The tenant strenuously denied that a sink was ever replaced in the rental unit during the tenancy and testified that at the end of the tenancy there was just one small chip which had occurred when an item fell from a shelf into the sink. I prefer the evidence of the landlord to that of the tenant. The landlord's evidence clearly

shows that a sink was ordered and installed in the rental unit in November 2007 and I find the tenant's memory to be faulty on this point. I find it likely that the tenant's memory is therefore likely to be equally faulty with respect to the condition of the sink at the end of the tenancy. I find that the landlord is entitled to recover the cost of replacing two sinks and I find the amount claimed to be reasonable. I award the landlord \$477.34.

- [7] **Countertop replacement.** The landlord seeks to recover \$100.00 as part of the cost of replacing the kitchen countertop in the rental unit. The landlord testified that at the end of the tenancy, the front-facing edge of the countertop had a number of pieces which had broken off. The landlord provided a photograph of the damage and an invoice showing that \$450.00 was spent installing new countertops. The landlord had no knowledge of the age of the countertop that was replaced. The tenant testified that the surface of the countertop that formed the edge of the counter kept detaching and that they continually glued it down during the tenancy. Having viewed the photographs of the damage, it appears that only a small portion of the countertop had been damaged. The edges are clearly broken away in the area in front of the dishwasher, but I find that replacing all of the kitchen countertops is an extreme remedy as there is no indication that the countertops could not continue to be used. I find that the tenants caused the damage shown and find that an award for the depreciation of the countertop is appropriate. I award the landlord \$30.00.

- [8] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Drapes	\$ 80.00
Mailbox key	\$ 25.00
Graffiti removal	\$ 100.00
Painting	\$ 200.00

Carpet	\$ 545.00
Sink replacement	\$ 477.34
Countertop replacement	\$ 30.00
Filing fee	\$ 50.00
Total:	\$1,507.34

I order that the landlord retain the \$440.00 security deposit and the \$13.88 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,053.46. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 07, 2010
