

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application to retain the tenant's security deposit and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to submissions of the other party.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage or loss under the Act, regulation or tenancy agreement and if so, the amount?
2. Return or retention of the security deposit.

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced February 8, 2008 and ended at the end of December 2009. The tenant paid a \$1,500.00 security deposit at the commencement of the tenancy. The parties participated in a move-in inspection together and the landlord prepared a document called "Inspection Report" and provided a copy to the tenant. The parties participated in a move-out inspection together and the landlord made notes regarding the condition of the rental unit on the "Inspection Report" document used at the time of move-in. On January 12, 2010 the parties met and signed a document whereby the parties agreed to

a deduction of \$450.00 from the security deposit for cleaning, missing parts and change of the washer/dryer. The parties further agreed that the landlord would obtain quotes

for painting. The landlord made an Application for Dispute Resolution on January 13, 2010 requesting compensation of \$1,250.00 for painting the rental unit.

The landlord submitted that the rental unit was painted shortly before the tenancy began and that the tenant is responsible for damages to the walls. The landlord claims he made four attempts to obtain a quote for painting and that all painters except one stated the whole house needed to be repainted as the colours would not match. The landlord claimed that he submitted the lowest quote and that the quote included only walls that required re-painting, not all walls. The quote submitted as evidence by the landlord was prepared January 4, 2010 and provides for an amount of \$1,250.00 for “walls (whole house)” and two doors.

As evidence the landlord provided photographs of the rental unit and a copy of the “Inspection Report” prepared by the landlord. The tenant agreed the photographs fairly represent the condition of the rental unit at the end of the tenancy but that the “Inspection Report” was altered after the tenant initialled it at the time of the move-out inspection and does not represent the same report prepared at the time of move-out. The landlord acknowledged re-writing the notes on the Inspection Report after the tenant initialled the original report.

The tenant was of the position that he was more than generous in allowing the landlord to retain \$450.00 for cleaning, missing parts and the washer/dryer and should not have to compensate the landlord further for painting. The tenant acknowledged that he did not clean the blinds or pull out the fridge to clean behind it but that the rental unit was otherwise clean. The landlord was of the position that the landlord was very accommodating in settling for \$450.00 given the tenant replaced a newer washing/dryer with an older set.

The tenant was also of the position the scuffs and holes in the wall were normal wear and tear for a family. Later in the hearing, the tenant acknowledged that his armoire had hit the walls when it was moved and that a wall in his teenager's room had multiple holes. The tenant acknowledged an interior door was very scuffed during the tenancy but also pointed out that the doors were old and that the one coat of white paint was peeling off.

Also included in the landlord's evidence was the document signed by the parties on January 12, 2010.

Analysis

Section 20 of the Residential Tenancy Regulations (the regulations) provide for the information that must be contained in a condition inspection report. Section 35 of the Act provides that a landlord must give the tenant a copy of the condition inspection report that was signed by both parties. Section 36 of the Act provides that a landlord loses the right to claim against a security deposit for damages if the landlord fails to complete a condition inspection report and provide a copy of it to the tenant.

The "Inspection Report" prepared by the landlord does not comply with the information requirements specified by the regulations. I also find the landlord did not provide a copy of the inspection report that was initialled by the tenant at the time of the move-out inspection. Therefore, in accordance with section 36 of the Act, the landlord did not have the right to make a claim against the security deposit for damages. Therefore, I find the tenant is entitled to return of the security deposit, plus accrued interest of \$20.16.

Although the landlord extinguished his right to claim against the security deposit for damages, the landlord's right to make an Application for Dispute Resolution to seek compensation from the tenant for damages remained intact. I am also satisfied the

landlord made an application within 15 days of the tenancy ending and the tenant is not entitled to doubling of the security deposit.

Having heard the landlord re-wrote the notes on the "Inspection Report" after it was initialled by the tenant I place little weight on the move-out inspection comments written by the landlord. Rather, in determining whether the tenant damaged the rental unit, I place most of the weight upon the photographs and verbal testimony provided by the parties during the hearing.

Upon review of the document signed by the parties January 12, 2010 I accept that the parties had reached an agreement that the tenant owed the landlord \$450.00 for additional cleaning, missing parts and the change in value of the washer/dryer. I uphold that agreement and find the landlord entitled to that amount for those items.

With respect to painting the rental unit I make the following findings. The Act requires that a tenant leave a rental unit undamaged. Damage does not include reasonable wear and tear. If a tenant does damage the rental unit the tenant is obligated to repair the damage before the tenancy ends or compensate the landlord for the value of the loss incurred by the landlord.

Residential Tenancy Policy Guideline 1 provides that a tenant must wash scuff marks from walls. If scuff marks cannot be washed off they need to be painted over. The policy guideline also provides that most tenants will hang pictures and that a tenant must repair an excessive number of nail holes or large holes.

Upon hearing from both parties and review of the photographic evidence, I find the tenant responsible for damage caused by moving the armoire, scuff marks that could not be washed off, excessive nail holes in the teenager's bedroom and a large hole in the kitchen wall. I further find the tenant is not responsible for the scuffs or chips to the

older interior doors as it appears to me that the doors were not properly prepared or painted sufficiently before the tenancy began. I do not find the tenant responsible for repairing reasonable sized holes caused by hanging pictures in the remainder of the rental unit.

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 depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. The policy guideline provides that the normal useful life of interior paint is four years. Given the age of the interior paint was approximately two years when the tenancy ended, I reduce the landlord's claim in half. Since I have found the tenant is not responsible for some of the painting required such as the interior doors and other reasonable wear and tear from hanging pictures I further reduce the landlord's claim by one-half. Therefore, I find the landlord entitled to compensation of one-quarter of the estimate for interior painting.

In summary, the landlord has established an entitlement to compensation in amount of \$450.00 as agreed by the parties on January 12, 2010 and \$312.50 ($\$1,250.00 \times \frac{1}{4}$) for interior painting. I further award the landlord one-quarter of the filing fee paid for this application or \$12.50.

In accordance with section 72 of the Act I offset the amount owed to the landlord against the security deposit and interest owed to the tenant. I provide the tenant with a Monetary Order for the net amount of \$745.16 calculated as follows:

Amount payable to tenant:

Security deposit	\$ 1,500.00	
Accrued interest on security deposit	<u>20.16</u>	\$ 1,520.16

Amount owed to landlord:

Cleaning, parts, washer/dryer	(450.00)	
Painting (one-quarter of quote)	(312.50)	
Filing fee (one-quarter of fee paid)	<u>(12.50)</u>	<u>(775.00)</u>

Net amount owed to tenant		\$ 745.16
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The landlord is ordered to pay the tenant \$745.16 forthwith. Enclosed for the tenant is a Monetary Order to serve upon the landlord and enforce in Provincial Court (Small Claims).

Conclusion

The landlord was partially successful in establishing an entitlement to compensation from the tenant. The landlord is awarded a total of \$775.00 and must return \$745.16 to the tenant forthwith. The tenant has been provided with a Monetary Order to ensure payment is made.

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: June 23, 2010.

Dispute Resolution Officer