

DECISION

Dispute Codes:

MNSD, MND, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord and a cross application by the tenant.

The landlord applied for dispute resolution on January 04, 2010 for;

- A Monetary Order to recover costs for damage caused to the rental unit in the total amount of \$816.88, unpaid rent of \$1400, and loss of revenue for January 2010 in the amount of \$1400
- Recovery of the filing fee associated with this application in the amount of \$50.

The tenant applied for dispute resolution on March 10, 2010 for:

- Return of double the security deposit in the amount of \$1400
- Recovery of the filing fee associated with this application in the amount of \$50.

Both parties attended the conference call hearing and participated with their submissions, testimony and documentary evidence, and were permitted to ask questions and attempt to settle all matters.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed ?

Is the tenant entitled to the monetary amount claimed ?

Background and Evidence

The following is undisputed. The tenancy began on September 01, 2000 and ended when the tenant vacated on December 06, 2009. At the outset of the tenancy the landlord collected a security deposit of \$700 which the landlord still holds. There was no *start of tenancy* inspection conducted, however, the parties conducted a walkthrough of the unit.. There was no *end of tenancy* inspection conducted. The tenant left rental unit before an end of tenancy inspection could be conducted. It is agreed that on

December 23, 2009 the landlord was in possession of the tenant's forwarding address in writing. In addition, it is undisputed that at the start of the tenancy the landlord and tenant wrote into their tenancy agreement that the tenant was permitted to paint the interior of the rental unit and that the landlord would pay for the paint.

The landlord claims that shortly after the beginning of the tenancy the tenant asked to replace the carpeting in one of the bedrooms as it was, according to the tenant, dilapidated, dirty and had an odour. The tenant proposed replacing it with laminate - which the landlord strongly refused, and offered to have the existing carpet professionally cleaned. The tenant proceeded to replace the carpet with the laminate without the landlord's consent, at the tenant's cost. The tenant claims the carpet was 20 years old. The landlord claims the carpet was 4 years old.

Matters between the parties culminated when the landlord gave the tenant a 1 Month Notice to End for Cause on November 06, 2009 with an effective date of December 31, 2010 (2009). The tenant determined to vacate December 06, 2009. The tenant did not pay rent for December 2009. The landlord claims \$1400 for December 2009 rent.

After the tenant vacated the landlord surveyed the rental unit and determined the painting the tenant was authorized to do was not to a reasonable standard. The landlord claims that the painting was not fully finished, and that the baseboards were unpainted. The landlord provided photographs of some of the painted walls. The landlord claims that at the end of the tenancy the landlord had to repaint the rental unit, again, as well as make other minor repairs, and claims \$300 for repainting and repairs.

The landlord is claiming costs to re-carpet the bedroom which the tenant took upon themselves to install laminate flooring: remove laminate, replace with new under pad, carpet and installation at a total of \$516.88.

The landlord testified that they purchased new carpeting on December 27, 2009, but could not have it installed until January 08, 2010, due to the holiday season, and also had to repaint and repair the rental unit prior to re-renting it. The landlord testified that they chose not to re-rent the unit for February 01, 2010 – choosing to do additional renovations and rent it March 01, 2010.

The tenant disputes that the replacement of the carpeting in the bedroom was inappropriate, as the carpeting was at the end of its life. The tenant does not dispute the landlord's claims of repairs or repainting.

Analysis

I have considered all evidence and all submissions to both claims and have considered all testimony given in the hearing.

As to the landlord's claim:

In order to claim for damage or loss (of revenue) under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party (the tenant) in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with some allowance for loss of rent or loss of occupation during the repair, depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

I find the landlord is entitled to unpaid rent for December 2009 in the amount of **\$1400**.

I find that the landlord's claim for damages largely meet the components of the above test for damage.

I find the landlord is entitled to recover the costs for remediation of the bedroom flooring – back to carpeting. However, I will accept the landlord's estimate that the carpeting

was 4 years old, and I deduct 50% for reasonable wear and tear of the carpet, only, and grant the landlord the amount of **\$426.84**.

I find the landlord is entitled to recover costs for remediation of wall damage and repainting. However, I find the landlord must bear some responsibility for the state of the painting done by the tenant – the landlord authorized the tenant to repaint without qualifying the work, supervision, or assurance / inspection after the fact. I set the landlord's entitlement for repainting and repairs at **\$200**.

I accept the landlord's evidence that they were required to wait until into early January 2010 to install the carpeting. However, on preponderance of the landlord's testimony and evidence, I do not accept that the rental unit could not have been made ready for new tenants for January 15, 2010. The testimony of the landlord is that they did not contemplate re-renting it until March 2010, after additional renovations which were unrelated to the tenancy. I find the landlord is entitled to loss of revenue for the period January 1 – 15, 2010 in the amount of **\$700**, without leave to reapply.

The landlord's total award is for \$2726.84. As the landlord's application has merit I grant the landlord recovery of their filing fee of **\$50**, for a total entitlement of **\$2776.84**.

As to the tenant's claim:

The landlord filed for dispute resolution within 15 days of receiving the tenant's forwarding address. The tenant is not entitled to double the security deposit. Also, as the tenant did not participate in the end of tenancy inspection the tenant's right to claim the deposit is extinguished under the Act. As a result, the tenant's application for the return of the security deposit **is hereby dismissed without leave to reapply**.

Conclusion

I order that the landlord retain the security deposit of \$700 in partial satisfaction of their claim and **I grant** the landlord an order under Section 67 of the Act for the balance due of **\$2076.84**. The landlord is being given the Order. If necessary, this order may be filed in the Small Claims 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*.