

## **DECISION**

Dispute Codes      MN SD O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep the security and/or pet deposit, for other reasons, and to recover the cost of the filing fee for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 22, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants confirmed receipt of the hearing package.

The Landlord and both Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed testimony was the month to month tenancy began on April 15, 2009, and ended in accordance with the Act on February 28, 2010. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenants paid a security deposit of \$550.00 on April 3, 2009. A move-in inspection report was completed on April 13, 2009 and a move-out inspection was conducted on March 1, 2010 in the presence of the male Tenant.

The Landlord testified and referred to her documentary evidence which included among other things a copy of an estimate for work to be performed, an invoice of work completed, photographs taken March 1, 2010 and March 5, 2010.

The Landlord confirmed that after completing the move-out inspection the Tenant wanted the opportunity to rectify the deficiencies but that she was not obligated to conduct a second inspection. The Tenant later returned to the rental unit and completed additional cleaning and painting. She later received a package via registered mail containing the keys to the rental unit and the Tenants' forwarding address. The Landlord attended the unit on March 5, 2010, took more photos and made arrangements to have the required work completed.

The property has been owned by the Landlord for sixteen years, the stove was in the unit at the time she purchased the residence, and the entire unit was professionally painted in December 2008. The Landlord confirmed that she has not re-rented the unit and listed it for sale approximately mid June, 2010.

The Landlord is seeking reimbursement for the following:

- Travel costs for the Landlord to travel from her residence to the rental unit at a per kilometre rate for a total of \$40.66.
- Recover of the registered mail costs to send the notice of hearing and evidence to the Tenants at a cost of \$44.13.
- The cost to repair and repaint the master bedroom, the 2<sup>nd</sup> bedroom, and the fireplace. The Landlord provided a written estimate of \$420.00 from a company that is owned by her brother in-law. She confirmed that two walls were repaired and repainted in the master bedroom at a cost of \$120.00. She did not provide an invoice for this work and did not know which date the work was performed. The work quoted on the estimate for the 2<sup>nd</sup> bedroom was not completed. The fireplace was patched and repainted at a cost of \$90.00 however the Landlord did not provide the invoice and did not know which date the work was performed.

- The Landlord is seeking reimbursement for the \$684.50 she paid to have the ceiling repainted in the 2<sup>nd</sup> bedroom, the window seat repainted, and for the cleaning costs. The work was performed on March 9, 2010 and a copy of the invoice was provided in the Landlord's evidence. The cleaning involved wiping down of all the walls, the aluminum window blinds, and wiping the residue out of the oven. The Landlord could not provide testimony of what products and supplies were purchased, as charged on the invoice, and stated that it was her sister and niece who completed the work. The Landlord argued that the 2<sup>nd</sup> bedroom was painted during the tenancy, without her permission, and when the Tenants repainted it at the end of the tenancy it turned out to be a different color than it was at the onset of the tenancy.

The Tenants testified and referred to their evidence which included, among other things, photos taken after they finished cleaning on March 2, 2010, copies of e-mails, a statement written by the person who assisted them with cleaning and painting of the 2<sup>nd</sup> bedroom, and copies of their tenancy agreement.

They confirmed that they attended the move-out inspection and after the Landlord noted the deficiencies they wanted the opportunity to correct the matters. They returned the next day, cleaned and painted and then sent a registered package to the Landlord on March 3, 2010 with the keys to the rental unit and their forwarding address.

The Tenants advised they hung two single shelf bookshelves in the master bedroom on one wall and a mirror on the other. When they removed these articles they filled the holes and sanded them. They did paint the 2<sup>nd</sup> bedroom a dark color and as supported by their evidence they purchased paint, as per the Landlord's instructions, and repainted the bedroom with touch ups to the ceiling. They acknowledged that there were a couple of marks or patches on the ceiling and they did not paint the window sill which shows a different color. There were three thumbtack size holes in the front of the mantle place where they hung Christmas stockings however they filled and sanded these holes in addition to other patch work they did around the rental property. They

argued they completed all the required cleaning including wiping down all of the blinds, the walls, baseboards, and cleaning the oven. The window seat was used and they found that after wiping it down on a regular basis the wood filler that was used when it was installed came out or wore off and that it was normal wear and tear as supported by their photos. The Tenants contend that the Landlord is attempting to sell the rental unit and is attempting to have the Tenants suffer the costs of upgrading the unit to be sold.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord is seeking reimbursement of expenses to travel between her residence and the rental property and chose a method of service which created an expense. In relation to these fees, I find that the Landlord has made a personal choice to be an absent landlord and to incur costs for service which cannot be assumed by the Tenants.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the Landlord may not claim these expenses, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

The Landlord has sought \$420.00 based on an estimate she provided in evidence. She argued that out of the work quoted on this estimate she has had the fireplace patched and repainted, and two walls in the master bedroom repainted. The Landlord did not provide evidence to support that the work was completed and she was not able to provide the date this work was performed. In the presence of opposing testimony by the Tenants that some of these deficiencies were a result of normal wear and tear, I find the Landlord has failed to prove the test for damage and loss, as listed above, and I hereby dismiss her claim of \$420.00, without leave to reapply.

With respect to the Landlord's claim of \$684.50 relating to the March 19, 2010, invoice, I find this evidence to be coloured by the fact the company who issued this invoice is owned by the Landlord's brother in-law and the work was performed by the Landlord's sister and niece. Upon careful consideration of the photographic evidence provided by the Landlord and the Tenants, and in consideration of their opposing testimony, I find the Tenants to be responsible for the cost to repaint the ceiling in the second bedroom and for the time to wipe out the oven cleaner that remained in the oven. Therefore I hereby award the Landlord \$232.50 (\$160.00 Painter labour + \$60.00 paint & supplies + \$12.50 half an hour of cleaning), in accordance with section 67 of the Act.

The Landlord has been partially successful with her claim, therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Ceiling Painting and oven cleaning	\$232.50
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$282.50</b>
Less Security Deposit of \$550.00 plus interest of \$0.00	- 550.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE TENANTS</b>	<b>\$267.50</b>

The Landlord is hereby ordered to pay the Tenants the balance owing of their security deposit in the amount of \$267.50.

### Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$267.50**.

The order must be served on the Landlord and is enforceable through the Provincial Court 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: July 19, 2010.

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Dispute Resolution Officer