



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application to retain part of the security deposit and recover the filing fee from the tenant. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to submissions of the other party.

Issues(s) to be Decided

Has the landlord established an entitlement to compensation from the tenant and retain part of the security deposit?

Background and Evidence

The parties provided undisputed evidence as follows. The landlord and the tenant, along with a co-tenant entered into a tenancy February 29, 2008 for the rental unit which consisted of an upper living unit and a basement suite (the co-tenancy). The co-tenants were required to pay rent of \$1,800.00. The co-tenant vacated and the landlord and tenant agreed the rent payable for the rental unit would be \$1,600.00 per month and the tenant was permitted to rent out the basement suite. After on-going flooding issues in the basement, in January 2010 the landlord determined the basement suite was no longer suitable for occupation. In recognition that only the upper floor was suitable for occupation the rent was reduced to \$800.00 per month.

I heard undisputed testimony that starting January 18, 2010 the owner of the property and the City began negotiations with respect to the City acquiring the property. Effective March 16, 2010 the city acquired the property. As part of the property transfer the landlord was required to remedy any damage caused during the tenancy and settle the issue of the security deposit with the tenant. The tenant and the City entered into a new tenancy agreement, including provision for a security deposit payable to the City effective March 16, 2010. The tenant continues to reside in the upper level of the rental unit under a tenancy agreement with the City.

By way of this application, the landlord is requesting authority to withhold \$406.77 from the tenant's \$900.00 security deposit paid February 29, 2008. The landlord refunded \$504.52 including accrued interest to the tenant within 15 days of the tenancy ending. The landlord's request pertains to damages in the basement suite allegedly caused by the tenant's basement suite tenant. The landlord paid \$406.77 to a repairman to repair three holes punched in the drywall and a bi-fold door used for the bathroom which was no longer intact. The landlord was of the position the tenant had engaged the landlord's repairman to make these repairs. The landlord explained that the landlord subsequently paid the repairman and the tenant had agreed that the payment would be deducted from the security deposit.

The repairman provided a breakdown of his invoice which I have categorized as follows:

Drywall repair labour:

Dec 15/09 Remove drywall, replace drywall & mud	2.5 hours
Dec 16/09 Sand & 2 nd coat of mud	2.0 hours
Jan 9/10 Sand & mud	1.5 hours
Jan 14/10 Sand & primer	<u>1.5 hours</u>
	7.5 hours

Custom bathroom door labour:	<u>2.0 hours</u>
Total labour	9.5 hours
Rate: \$30.00/hour	\$285.00 + gst

Materials:

Drywall, mud, tape, primer, door and door hardware \$96.00 + taxes

The tenant agreed that her former basement suite tenant had punched three holes in the drywall but was of the position the repairman overcharged for these repairs and a portion of the drywall repairs were made on January 14, 2010 when the basement suite was deemed uninhabitable. The tenant submitted three written estimates for drywall repairs ranging between \$67.20 and \$156.80 including tax. The tenant was of the position \$120.00 is fair for the cost of repairing the drywall. The tenant alleged the bi-fold door was always problematic but that it was still intact and merely off its tracks. The tenant was of the position the landlord asked the repairman to make the repairs.

The tenant was also of the position the repairman's time included other issues related to the flooding and removal of a squirrel's nest. The landlord responded by stating these issues were invoiced separately to the landlord. The landlord acknowledged that a bathroom door in the basement suite had been a continuous problem.

Upon enquiry, the landlord testified that January 11, 2010 there was flooding in the basement suite and then it subsided. January 14, 2010 flooding occurred again. For purposes of reimbursing the basement suite tenant January 14, 2010 was used as the date to calculate reimbursement of rent paid; however it was January 18, 2010 that the suite was deemed uninhabitable. January 18, 2010 is also the date the owner decided to enter into negotiations with the City. The tenant was of the position the basement suite was deemed uninhabitable.

The parties had participated in a move-in inspection; however, a move-out inspection was not performed for the basement suite. The landlord was of the position that the landlord offered to do one after the tenancy ended as the suite was still vacant but that the tenant would not participate in one.

As evidence for the hearing I was provided a copy of the move-in condition report, the repairman's invoices, three quotes obtained by the tenant, and several emails between the parties and the repairman.

Analysis

Having heard the tenant entered into a new tenancy with the City effective March 16, 2010 I find the tenancy between the landlord and tenant ended March 16, 2010. Accordingly, after March 16, 2010 the landlord is considered a former landlord. I find tenant was not obligated to participate in a condition inspection after March 16, 2010 with a former landlord.

Under the Act, a tenant is responsible for damage caused by the tenant or a person permitted on the residential property by the tenant. In this case, I am satisfied that the tenant is responsible for the damage caused by the person she permitted to occupy the basement suite. At issue is the extent of damages caused by that person.

Both parties agree that the person occupying the basement suite caused three fist sized holes in the drywall and I find the tenant responsible for repairing the damage to the drywall. The parties were in dispute with respect to the bi-fold door. The landlord has the burden to show the tenant is responsible for damage to the door. There is not a move-out inspection report for me to refer to. There are no photographs for me to view. What I am provided is disputed verbal testimony provided during the hearing, copies of emails exchanged between the parties and the repairman's invoice.

With respect to the emails, of particular interest are emails between the parties on December 9, 2009. The tenant advises the landlord that there is “some damage” to the basement suite but does not specify the damage. The tenant indicates she will help pay for this out of the damage deposit paid by the basement suite tenant and the tenant requests plastic on the windows. In response, the “I have authorized [the repairman] to fix the bathroom door and recaulk the tub...I have no problem with you using [the repairman] to repair damages. His rate is \$30.00 per hr and I will just make sure he invoices us separately.”

I find the landlord’s email indicates the landlord has engaged the repairman to repair the bathroom door along with other repair issues ordinarily made by a landlord. After this statement the landlord indicates the tenant can use the repairman for damages. I find the wording of the email indicatives that the landlord has assumed responsibility for the bathroom door and that it is a separate issue from damages to the walls for which the tenant is responsible. I find the previous problems with the bathroom door also indicative that the bi-fold door was likely insufficient for the purpose it was installed to do. Further, the repairman’s invoice indicates a custom door had to be installed. Considering these factors I find the preponderance of evidence indicates the landlord is responsible for the bathroom door and I do not find sufficient evidence the tenant is responsible for repairing the bathroom door.

In light of the above findings, the tenant is responsible for repairing the holes in the drywall. I have considered the cost claimed for this repair. In doing so, I find the cost includes repairs and primer. Thus, I have included the labour charged for January 14, 2010. I do not find sufficient evidence the repairman’s invoice includes charges for items not identified on the invoice. Using the repairman’s invoice the cost of labour for the drywall repair is 7.5 hours @ \$30.00 per hour plus tax which is \$252.00.

The tenant provided three quotes to indicate the repairman's invoice is unreasonably high. The two lowest quotes do not indicate the nature of the tenant's enquiry and I find I cannot rely upon those quotes. The third and highest quote of \$156.80 shows the tenant enquired about the repair of three fist sized holes; however, the third quote does not indicate the cost of materials.

I find the third quote is not a complete or reasonable estimate as there would be material costs associated with repairing drywall holes of that size. Thus, I prefer the invoice of the handyman who actually saw the damage and repaired it. Since the cost of materials invoiced by the handyman is co-mingled with the materials for the door I estimate the cost of materials to be \$25.00.

In light of the above, I find the landlord entitled to compensation of \$277.00 [\$252.00 labour + \$25.00 materials] from the tenant for drywall repairs. As the landlord was partially successful with this application I award a portion of the filing fee to the landlord. I award the landlord \$34.00 of the filing fee [$\$277.00 \text{ awarded} / \$406.77 \text{ claimed} \times \50.00 filing fee].

As the landlord has withheld \$406.77 from the tenant's security deposit and I have awarded the landlord a total of \$311.00 the landlord is ordered to return the balance of \$95.77 to the tenant forthwith. Provided to the tenant with this decision is a Monetary Order in the amount of \$95.77 to ensure payment is made.

Conclusion

The landlord was partially successful in this application and has been awarded a total of \$311.00. **The landlord must return the remaining balance of the security deposit of \$95.77 to the tenant forthwith.** The tenant has been provided a Monetary Order in the amount of \$95.77 to ensure payment.

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: August 04, 2010.

Dispute Resolution Officer