



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking to retain the security deposit and a monetary order and the tenant is seeking return of the security deposit.

The hearing was conducted via teleconference and was attended by 3 agents for the landlord. The tenant did not attend.

As the tenant's Power of Attorney filed an application on behalf of the tenant to be heard at this hearing I am satisfied the tenant's agent was aware of this hearing was sufficiently served in accordance with Section 71 for the purposes of the *Residential Tenancy Act (Act)*.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

In addition it must be decided if the tenant is entitled to a monetary order for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on July 1, 1999 as a 1 year fixed term tenancy that converted to a month to month tenancy on July 1, 2000 with a current monthly rent of \$764.00 due on the first of the month.

The tenant vacated the rental unit by April 30, 2010. The landlord contends the condition of the rental unit of greatest concern was the walls that had been discoloured from the accumulation of heavy smoking over the 11 year tenancy. The landlord stated this was abnormally heavy smoking. The landlord testified that the unit had not been painted for the duration of the tenancy.

Analysis

As the tenant's agent failed to attend the hearing I dismiss the tenant's application in its entirety without leave to reapply.

Residential Tenancy Policy Guideline #37 shows that the useful life of an interior paint finish is 4 years. As this tenancy has lasted nearly 3 times as long as that period and by the landlord's testimony the unit has not been painted for the duration of that tenancy, I find it reasonable to expect the landlord to paint this unit prior to renting it to a new tenant.

As the tenancy agreement had no restrictions related to smoking in the rental unit and the landlord has failed to provide any documentary evidence that shows this damage to be more than wear and tear and in conjunction with my finding above I would expect the walls to be washed in preparation to accept paint. As such, I find the tenant is not responsible for these charges.

Despite dismissing the tenant's application, as I have found the landlord has failed to establish the tenant's responsibilities for these charges, I order the landlord to return the tenant's security deposit in full with interest in accordance with the regulations.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$325.09** comprised of \$295.00 security deposit and \$30.09 interest owed.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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*.

Dated: September 24, 2010.

Dispute Resolution Officer