

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit site or property, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 11, 2010. The Tenant confirmed receipt of the hearing package.

The Landlord and Tenant 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 pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy agreement was effective December 1, 2007 and switched to a month to month tenancy after May 31, 2008. The tenancy ended when the Tenants vacated the unit as of April 30, 2010. Rent was payable on the first of each month in the amount of \$80.00 and a security deposit of \$387.50 was paid on November 20, 2007. A move-in inspection report was completed December 1, 2007 and a move-out inspection report was completed April 30, 2010.

The Landlord testified and referred to her documentary evidence in support of her testimony which included among other things copies of invoices for repairs completed to the unit in October 2006, copies of invoices pertaining to cleaning and repairs to the unit at the end of this tenancy after April 30, 2010, a copy of the tenancy agreement, move-in and move-out inspection reports, and photos of the rental unit at the end of the tenancy.

The Landlord is claiming the following:

- 1) Costs to clean the rental unit in the amount of \$300.00 as supported by their evidence labelled M1
- 2) Carpet cleaning costs of \$150.00. The landlord confirmed the carpets were never cleaned as they needed to be replaced.
- 3) Carpet replacement costs of \$504.68. The carpets were installed in 2006 as supported by their evidence L4. The carpet was damaged which is why it could not be cleaned. The entire unit had new carpet installed at a cost of \$2,626.64. The Landlord is only seeking a portion of the total cost.
- 4) The counter beside the stove was damaged by the Tenants during the tenancy which caused the Landlord to have to replace the countertops. The Landlord is seeking \$700.00 to cover the cost of the counter of \$496.61 on page M5 and the labour to install it.
- 5) The Landlord is claiming \$350.00 for the cost to repaint the living room to cover up the smoke damage caused by improper use of the fireplace. Receipts on pages M1 and M2 support that there were several rooms painted and the Landlord is only seeking a portion of the cost.

The Tenant testified and confirmed there was damage caused to one of the kitchen counters during the tenancy. She does not believe she should suffer the costs of replacing both counters. She also does not believe she should have to pay to have a new double sink installed when there was only a single sink in the unit during her tenancy.

The Tenant confirmed she did not clean the rental unit and that there was damage caused to the unit during the tenancy. It was her understanding that her security deposit would be used to cover these costs. She confirmed that she damaged the carpet with a heater, but only in the one room, and that there was damage to the walls in the living room from improper use of the fireplace. She confirmed she used the fireplace to heat the unit during the tenancy.

The Tenant questioned why all of the carpet was changed if it was only changed in 2006. While she agrees that there was damage and the unit needed cleaning she does not agree with the amounts being charged by the Landlord.

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 evidence supports the rental unit was in a state that required several hours to bring the unit back to a clean state which means the Tenant contravened Section 37 (2) of the Act which states that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged. The evidence supports the Landlord paid a minimum of \$300.00 for cleaning which is 20 hours at \$15.00 per hour. I find the amount claimed by the Landlord for cleaning to be reasonable and I hereby approve their claim of \$300.00.

The Landlord is seeking \$150.00 to reimburse for carpet cleaning which was not completed at the end of this tenancy. Therefore the Landlord has not suffered this loss and has failed to prove the test for damage or loss listed above. I hereby dismiss the Landlord's claim for \$150.00 for carpet cleaning.

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 repair or replacement cost by the depreciation of the original item.

The carpet in the rental unit was installed in September 30, 2006 and replaced as a result of this tenancy on June 16, 2010 at a total cost of \$2,626.64. The Landlord is seeking \$504.68 for damages caused to the carpet during the tenancy. Section 32 (3) of the Act states that a tenant must repair any damages caused by the actions or neglect of the tenant or any person permitted on the property by the tenant. The rental unit is a 2 bedroom plus den townhouse and damage was caused in on one room. The normal life expectancy of a carpet is ten years. Therefore I approve the Landlord's claim in the amount of \$394.00 which is a depreciated value (60% of \$2,626.64 divided by 4 considering the two bedrooms, den, and living room had the carpet replaced).

The Landlord has claimed \$700.00 to replace kitchen countertops and submitted a receipt which totals \$496.65 which covers the costs of replacing both counters in the kitchen. There is no evidence to support additional charges for the installation of the

counter tops. The Tenant accepted responsibility for the repair of the counter top which was replaced in October 2006. A normal life expectancy of a counter top is 25 years. Therefore I hereby approve the Landlord's claim in the amount of \$208.59 (50% of \$496.65 x 21/25).

The evidence supports the Tenant failed to comply with Section 32 of the Act when she did not repaint the wall above the fireplace due to the smoke damage caused by the fireplace. The rental unit had been painted in October 2006 and the normal life expectancy of a paint job is four years which means there was one half of a year remaining on the life expectancy of the paint job. There is no evidence to neither support the actual cost of paint or primer purchased nor is there evidence to support which date the work was completed and at what cost. With the limited evidence before me I approve the Landlord's claim in the amount of \$43.75. ($\$350.0 \times 0.5/4$)

The Landlord has been partially successful with their 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 tenant's security deposit as follows:

Cleaning the rental unit	\$300.00
Carpet replacement	394.00
Counter top replacement	208.59
Painting of the living room	43.75
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$996.34
Less Security Deposit of \$387.50 plus interest of \$6.31	- 393.81
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$602.53

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$602.53**. The order must be served on the respondent Tenant 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: September 28, 2010.

Dispute Resolution Officer