



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 cleaning, damage to the unit and loss of rent and to keep all or part of the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the tenant for this application.

Both parties appeared and gave testimony.

From the outset the tenant stated that she agreed with the \$159.60 cost of cleaning the carpet and a portion of the \$225.00 cleaning costs in the amount of \$150.00.

Issues(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for damages and loss of rent.

Background and Evidence

The tenancy began on June 1, 2007 and a security deposit of \$310.00 was paid. The current rent was \$680.00. According to the landlord, a One-Month Notice for Cause was served on the tenant to end the tenancy as of August 31, 2010 and the tenant vacated on that date. The landlord testified that although a move-in inspection had been done at the beginning of the tenancy, no move-out inspection was initiated by the landlord due to the landlord's reluctance to interact directly with the tenant.

The landlord testified that during August the suite was advertised on line but no showings were scheduled. The landlord testified that the unit was not in a condition to show because the unit needed to be repainted and fumigated due to smoke damage which the landlord had attributed to the tenant's smoking and burning candles. The landlord testified that attempts were made to repaint the ceilings during the tenancy, however the task was aborted as the individual engaged by the landlord did not have adequate skills to complete the job properly. The landlord confirmed that the suite had last been painted in 2006. The landlord stated that it was necessary after the tenant had vacated to repaint the entire unit in order to rid it of the smoke contamination and the

landlord submitted a copy of an invoice dated September 20 showing a charge of \$450.00 to paint the suite. In addition to the cost of painting, the landlord stated that the delay in re-renting resulted from the need to eliminate smoke damage caused by the tenant and the landlord was claiming a loss of rent for the month of September 2010 in the amount of \$680.00 as the unit was not re-rented until October 1, 2010.

The tenant did not agreed with the claim for painting and denied causing any damage beyond normal wear and tear. The tenant also did not agree that this alleged damage had delayed the re-rental efforts and in fact took the position that the landlord had failed to market the unit prior to the tenant leaving and thus did not meet the legal requirement under the Act to take reasonable steps to mitigate losses.

The landlord also submitted a cleaning invoice for \$225.00 with a detailed accounting of each task performed. The tenant disputed a portion of the cost and pointed out that the tenant had completed some of the cleaning tasks indicated on the invoice prior to vacating. The tenant only agreed to compensation of \$150.00 for the cleaning. The parties agreed on the \$159.60 compensation for the carpet cleaning costs.

Analysis

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 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 to compensate for loss
4. The Applicant did whatever was reasonable to minimize the damage or loss

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 replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the item, reference will be made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

I find that section 32 of the Act contains provisions regarding obligations to repair and maintain. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. While a tenant of a rental unit must repair damage caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. Section 37 (2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In this case I am unable to find that the need for repainting was caused by the tenant in violation of the Act. I find, given that the average useful life of paint is 4 years and this unit was last painted in 2006, any cost or delay due to repainting the unit must be borne solely by the landlord. In any case, I find that the landlord did not prove that reasonable steps were taken to minimize losses. Aside from the fact that the unit was not shown prior to the end of the tenancy, no evidentiary submissions were submitted by the landlord to verify advertising and the tenant had challenged the assertion that the landlord advertised the suite. Accordingly I find that the portion of the landlord's claim relating to the \$450.00 cost of painting and \$680.00 loss of rent must be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to monetary compensation of \$150.00 for the cost of cleaning and \$159.60 for the carpet cleaning for a total of \$309.60.

Conclusion

I hereby grant the landlord compensation in the amount of \$309.60 which will be satisfied in full by the retention of the tenant's security deposit. The remainder of the landlord's application is dismissed without leave.

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: November 2010.

Dispute Resolution Officer