



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 an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the security deposit, 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 June 13, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant confirmed receipt of the Landlord's evidence and hearing package.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Was the rental unit damaged during the course of the tenancy?
2. Has the Landlord proven entitlement to a monetary order?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy effective March 1, 2008 which switched to a month to month tenancy after August 31, 2008. Rent was payable on the first of each month in the amount of \$1,100.00 and the Tenant paid a security deposit of \$550.00 on January 24, 2008. A move-in inspection report was completed March 1, 2008 and the move-out inspection report is dated June 30, 2010. This was the third unit the Tenant had rented in this building having moved directly from one unit to another.

The Landlord testified that the rental unit was inspected on June 30, 2010 and in her words was "destroyed". She stated that there was a lot of damage caused to the unit for which she is seeking compensation for. She stated the building is approximately 25 years old and that she has managed this building for 3 ½ years. She argued that this Landlord is a big company and the amounts charged are the rates they have in their computer. She did not have invoices to refer to and argued that her head office only provides her with a copy of the purchase order (P.O.) that is issued for the purchase of the items. She did not have access to the purchase order during the hearing and estimated the dates that work was completed. When asked the age of the items being claimed the Landlord was quick to provide an age and then confirmed that she did not have records to refer to the age as this information would be kept by her head office. She is seeking the following amounts:

1. \$131.94 to replace two closet doors that could not be repaired. She did not know the exact age. She stated the Tenant had removed these doors from the closets. She could not provide an exact date of when these doors were replaced and asked the maintenance person who replied approximately July 7, 2010.
2. \$59.35 to replace a 30" bedroom door that had three big holes in it.
3. \$369.60 to replace three kitchen cabinet drawers where the fronts had broken off of them. These are the original kitchen cabinets.
4. \$111.42 to replace four plastic window blinds that were new at the onset of this tenancy.
5. \$179.00 for carpets (2 x 89.5) which she later stated these amounts being charged are for cleaning the carpets.
6. \$26.80 to replace the thermostat that was damaged. She claims this thermostat was only three years old.
7. \$120.00 to clean the rental unit. This amount is charged at \$10.00 per hour and this unit required two days of cleaning the kitchen and bathroom.
8. \$24.00 for cleaning supplies. Their company charges a flat rate of 20% of the cleaning cost for cleaning supplies.
9. \$290.00 for labour charges for painting the entire unit, walls and ceiling. The Landlord stated this unit was painted just prior to the onset of the tenancy.
10. \$101.50 for painting materials. Their company charges a flat rate of 35% of the painting costs for supplies such as paint.
11. \$115.57 for repairs to the unit. The Landlord stated that this charge covers the cost of labour to install the doors and complete repairs.
12. \$500.00 to replace the kitchen countertop. The Landlord confirmed this countertop was original and suffered some sort of water damage.

13. \$60.00 for damage caused to the edge of the countertop that was broken off. The Landlord could not explain why this charge was separate from the countertop charge.
14. \$81.70 to replace the washroom sink. The Landlord stated this sink had to be replaced due to damage caused by the Tenant and this sink was only about 3 years old.

The Landlord confirmed her total claim is \$2,170.88 and that based on their calculation after they deduct the security deposit and interest the amount due is \$1,613.78.

The Tenant testified that he attended the first move out inspection on June 14, 2010 and the security deposit refund and move out inspection form were completed prior to his meeting with the Landlord on June 15, 2010. He stated that after seeing what the Landlord was attempting to charge him he decided to hire a handy-man contractor to complete the repairs. He paid his contractor \$400.00 and he repaired all the kitchen drawers where he re-attached the drawer fronts; he prepared and puttied all of the walls to paint them, and did cleaning of the unit. The Tenant stated that when the Landlord saw that he was getting this work done she told him that he was going to get charged for painting anyways because the Tenant's handy-man was not a "professional", so he decided not to have his handyman complete the painting.

The Tenant argued that the kitchen counter was damaged by the Landlord's neglect in getting the dishwasher repaired. When the Landlord finally replaced the dishwasher it was their installer who broke the counter edge when he attempted to complete the dishwasher installation. He stated the countertop, kitchen cabinets, and bathroom sink were very very old and appeared to be original to him. He argued that this was the third unit he had occupied in this building in the past five years and even though he would make comments during the move in inspection the Landlord would always reply "the building is very old what do you expect" and she would not write the items down. He stated the holes in the bedroom door were there at the onset of his tenancy and he confirmed that he removed the two closet doors and put them in storage because they were old and did not work properly and he had past experiences where these doors fell on him when he attempted to open them. The maintenance person told him that the doors were too old and could not be repaired. He felt it was safer and easier to just remove them and hang up a cloth curtain because the Landlord refused to repair or replace them. He argued that the thermostat was working fine when he was there.

The Tenant confirmed the window blinds were new and were very inexpensive plastic blinds that broke easily. He also confirmed that the unit had been painted at the onset of his tenancy.

His handy-man finished up on June 18, 2010 and he did a second walk through with the Landlord on June 30, 2010 however the Landlord only agreed to deduct the cost of the light cover and refused to deduct any other items off of her list of charges. The Tenant argued that the amounts charged by the Landlord are all estimates and that this document was completed before his June 15, 2010 meeting when none of these repairs were completed and these amounts are just estimates. He knows that the carpet was not cleaned, as it was old and the Landlord removed it.

The Landlord confirmed the carpet was old and was replaced however she argued they attempted to clean it first. She also confirmed that it is the company policy to only allow professionals to conduct work. She acknowledged that the Tenant hired a "handy-man" and he did repairs but argued that he was not a professional. She confirmed that she completed the reports after the June 14, 2010 inspection and gave the Tenant the list of charges and move-out inspection reports on June 15, 2010. She re-stated that her company is big and they have all the costs in the computer and her head office looks after the purchase of materials.

Analysis

The Tenant confirmed that he did not provide the Landlord with copies of his evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision, in accordance with section 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*. I did however consider the Tenant's testimony.

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

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 evidence supports the window blinds were new from March 2008 and they were damaged during the course of the tenancy. The normal useful life of plastic blinds is estimated to be six years, in accordance with the *Residential Tenancy Policy Guideline*. The Landlord has not provided an actual amount required to replace these blinds rather she has provided an estimated amount. Therefore I approve the Landlord's claim for a nominal amount in the amount of \$60.00 (\$15 x 4).

I heard undisputed testimony that the rental unit was painted prior to the start of the tenancy in March 2008. The normal useful life of interior paint is 4 years in accordance with the *Residential Tenancy Policy Guideline*. The Landlord has not provided evidence to support the actual costs of preparing the unit, materials, and labour to repaint the unit. There is evidence the Tenant's handy-man contractor did the preparation work in the unit. Therefore I approve the Landlord's claim for materials and labor to paint the unit in the amount of \$145.00.

After careful consideration of the evidence and testimony before me, I find the Landlord provided insufficient evidence to support their argument of the age of the items being claimed, that they did not provide evidence to support the actual cost incurred to compensate for the damage or that the work was even completed. I accept the Tenant's testimony that the Landlord refused to document items on the move-out inspection report and I do not accept the items listed on the move-out report as this was completed June 14, 2010 not June 30, 2010 and does not reflect the work completed by the Tenant's handy-man. Therefore I accept the Tenant's testimony that the remainder of the items being claimed by the Landlord are original to the building and of the age where they have far exceeded their useful life bringing the depreciated value to zero. With respect to the carpet I do not accept the Landlord's testimony that they attempted to clean the carpet before removing it. I accept the Tenant's testimony that he paid his handy-man to clean the unit and in the absence of actual evidence of cleaning by the Landlord I dismiss the Landlords claim for cleaning. Based on the aforementioned, and

in the presence of the Tenant's opposing testimony, I find the Landlord has provided insufficient evidence to prove the test for damage or loss, as listed above and I dismiss the remainder of their claim of \$1,667.96 (\$2,170.88 – 111.42 – 290.00 – 101.50).

The Landlord has been partially successful with their application, therefore I approve 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:

Replacement of plastic window blinds	\$60.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$255.00
Less Security Deposit of \$550.00 plus interest of \$7.73	-557.73
TOTAL OFF-SET AMOUNT DUE TO THE TENANT	\$302.73

I HEREBY ORDER the Landlord to refund the Tenant the balance of his security deposit of \$302.73.

Conclusion

A copy of the Tenant's decision will be accompanied by a Monetary Order for **\$302.73**. 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: November 26, 2010.

Dispute Resolution Officer