



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for the return of the security deposit.

The landlord made a cross application for a Monetary Order for damage to the unit; to keep the security deposit; and for the recovery of the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to a Monetary Order?

Is the landlord entitled to keep the security deposit?

Is the landlord entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of an apartment in a multi unit complex. Pursuant to a written agreement, the month to month tenancy started on November 1st, 2009 and ended on August 31st, 2010.

The monthly rent of \$1200.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$600.00. Inspection condition reports were completed at the start and the end of the tenancy.

The landlord testified that at the end of the tenancy, the tenant had left large holes when she removed her closet organizer from the bedroom closet. The landlord stated that she also left screw holes in the bathroom. He stated that the tenant's attempts to patch the holes were inadequate and that he had to bring in a contractor to do the repairs. That contractor attended the hearing and specified in detail that the tenant's patch work had to be redone through proper filling, sanding and smoothing before painting.

The landlord stated that the unit had just been painted at the start of the tenancy, but that it needed repainting throughout after at the end of the tenancy because of the prevailing smell of tobacco. He stated that four prospective tenants declined to rent the unit for that reason. The landlord also stated that he received several complaints of second hand smoke in the building during the tenancy.

The landlord said that the tenant returned the wrong key to the unit when she moved out. He did not notice this error until the new tenant could not use that key to access the unit. Although he still had her phone number on file, the landlord said that he did not think of contacting the tenant and that he called a locksmith to rekey the unit.

In his evidence, the landlord provided receipts for the following monetary claim:

- Wash walls and doors: \$ 50.00
- Repair closet and holes in walls: \$100.00
- Paint walls and doors: \$410.00
- Mop floor: \$ 25.00
- Reinstall dining room light: \$ 65.00
- Locksmith repair: \$134.40
- Mailing costs: \$ 30.81

- Filing fee: \$ 50.00
- Total: \$865.21

The tenant testified that although the building was not a non-smoking building, she took steps to curtail her smoking habit once she heard of the second hand smoke complaints. She acknowledged that the unit needed repainting. She stated that she did not sign the condition inspection report because the landlord did not have quotes or actual costs at the time, and feels that \$650.00 is overrated, particularly when she had already done some prepping work before moving out.

Concerning the return of the wrong key, she stated that the landlord had her phone number and could have contacted her. She said that she did not become aware of this incident until she received a copy of the landlord's evidence for the hearing.

The tenant also said that she cleaned the unit when she moved out. She stated that she gave the landlord notice to end the tenancy on August 31st, 2010, paid the rent for September and told the landlord that the unit would be ready for new tenants as of September 1st, 2010.

Analysis

The burden of proof is on the landlord to justify the repairs. In this matter, the tenant did not dispute the evidence; rather, she questioned whether the costs associated with the repairs were reasonable.

The *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of interior paint, that useful life is four years. The cost for repainting the suite was \$410.00. Based on the evidence and the guidelines, I find that the landlord lost three years or approximately 75% of the paint's useful life. Therefore I grant the landlord \$307.50 for that portion of his claim.

Concerning the damages to the walls, the tenant did not rebut the landlord's testimony and I accept the landlord's claim of \$100.00.

Regarding washing and cleaning the suite, the condition inspection report makes no mention that this was required. The tenant stated that she cleaned the unit. In the absence of supporting evidence I dismiss that portion of the landlord's claim. The condition inspection report also made no reference to the dining room light. However, I accept that some work was required for reinstalling a light fixture and I award the landlord half his claim in the amount of \$32.50.

Lastly, the tenant made an inadvertent error by returning the wrong key. The landlord did not verify the keys when the tenancy ended, nor did he think of contacting the tenant. Since both parties were partially to blame, I award the landlord half the claim in the amount of \$67.20.

There are no provisions in the *Residential Tenancy Act* to claim for administrative costs related to a dispute resolution such as mailing fees. The only fee that can be recovered is the one associated with the filing of the application for dispute resolution. Since the landlord was partially successful, I award half the cost in the amount of \$25.00.

Regarding the tenant's submission on the availability of the rental unit in September for which she had paid rent, I accept the landlord's evidence that prospective tenants declined to move in and that the landlord had to make repairs that were beyond reasonable wear and tear before the unit could be rented again.

Conclusion

The landlord has established a claim of \$532.20. The landlord kept the tenant's \$600.00 security deposit. Pursuant to Section 67 of the Act, I grant the tenant a monetary order for the balance owing of \$67.80.

This Order may be registered in the Small Claims Court 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: February 02, 2011.

Residential Tenancy Branch