

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This was an application by the landlord. The hearing was conducted by conference call. This hearing was convened in response to an application filed by the applicant on October 12, 2010 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for damages to the unit and for loss - Section 67;
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that the tenant was served with the application for dispute resolution and notice of hearing, as well as the landlord's evidence in this matter by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act). The tenant did not participate in the conference call hearing.

Preliminary Matters

An individual made an appearance on behalf of the tenant requesting an adjournment to this matter. The requestor explaining he was not the tenant's advocate, formal representative or agent. The requestor explained that the tenant had made a request for an adjournment to the applicant several days before, but that the applicant refused for the matter to be adjourned, wanting to proceed on this date. The requestor explained that the tenant's employer had set up a meeting for the tenant to attend, and that the tenant's "expertise" was required for the meeting, and that the meeting could not be postponed. The requestor claims the tenant had not sent evidence to this matter but has photographs available in their defence which could be supplied. The landlord strongly opposed an adjournment stating that the tenant had time and opportunity to ensure her attendance and provide her evidence, and that he had taken time from work to attend the hearing.

I considered all aspects of this matter in respect to the Rules of Procedures (Rule 6) and the Criteria for Granting an Adjournment (Rule 6.4) which I am required to consider. On review I was not satisfied that the circumstances advanced on behalf of the tenant were beyond the control of the tenant, given that the tenant had sufficient notice of the hearing and it was available to the tenant to plan accordingly so as to be heard. I also find that the tenant's possession of evidence which has not been forwarded to this matter is indicative of the tenant's neglect of this matter. An adjournment was denied. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed sworn testimony and evidence of the landlord is that the tenancy started July 26, 2008 and ended July 30, 2011. Rent payable was \$2050 per month. At the outset of the tenancy the landlord collected a security deposit of \$1000. At the end of the tenancy the landlord and tenant conducted an inspection and completed an inspection report provided to the tenant. The parties determined to administer the security deposit by agreement - for the landlord to retain \$352.77. This portion of the deposit was not originally in dispute. The balance of the security deposit and interest in dispute is \$654.65.

The landlord claims that the tenant caused additional damage to the rental unit and also claims other remediation costs for cleaning. The landlord provided an abundance of evidence including photographic evidence, estimates, and invoices in respect to their claims. The landlord's claims are as follows:

Broken blind – living room	38.07
Cleaning costs	150.00
Carpeting – damaged beyond repair - replace	2415.17
Carpeting – claim 50% for replacement – mitigated	327.78
Refrigerator replacement – cosmetic / stain damage	\$180
Heat register cover – damaged – replacement	4.80
Blue paint damage – door top floor bedroom – labour	30.00

Stain vinyl flooring – labour	50.00
Stain damage to medicine cabinet – claim 25% for replacement – mitigated	56.00
Photofinishing – evidence	21.17
Filing Fees for the cost of this application	50.00
Parties agreement re: retention from security deposit	352.77
Total monetary claim	\$3675.76

The landlord provided evidence of a broken blind for the living room which the landlord claims was new at the outset of the 2 year tenancy. The landlord claims the damage was not the result of reasonable wear and tear.

The landlord provided an invoice for cleaning and photographic evidence in respect to their assertion that the rental unit was not left reasonably clean.

The landlord provided photographic evidence and document evidence which the landlord claims supports the need to replace the carpeting in the living room, main floor bedroom and top floor north bedroom due to permanent staining. The landlord testified that this is a mitigated replacement cost for the carpet only, but includes an amount for furniture management to replace the carpet in the amount of \$168.

The landlord provided photographic evidence and document evidence which the landlord claims supports the need to replace the carpeting in the top floor south bedroom due to permanent staining. The landlord testified that this is a mitigated replacement cost for the 2 year old carpet only, and that it represents the mitigated lifespan of the carpet in the amount of 50%.

The landlord provided evidence in support of replacement of the refrigerator with another used refrigerator. The landlord claims that the original refrigerator acquired a permanent and very discernable stain on the door. The landlord claims the refrigerator was functional, but unsightly.

The landlord claims the cost of a new heat register cover which the landlord provided evidence that it was permanently stained.

The landlord claims labour for remedial work required to mitigate permanent stains damage to a medicine cabinet and vinyl flooring.

The landlord provided evidence to address the mitigated useful life of another medicine cabinet permanently stained. The landlord claims 25% of the purported replacement cost of the cabinet.

Analysis

I have carefully considered all the evidence before me. I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7 of the *Act*. In a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord bears the burden of proof and the evidence furnished by the Applicant landlord must sufficiently satisfy each component of the test below:

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the loss or to compensate for, or otherwise rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss.

On preponderance of the undisputed evidence, and on the balance of probabilities, I accept the landlord's testimony and documentary evidence submitted as largely establishing that they incurred the amounts claimed and that they are entitled to compensation.

I am not allowing the landlord costs for photofinishing (-21.17) as this is a litigation cost and such costs are not compensable. Each party is responsible for their own litigation costs. I find that according to Residential Tenancy Policy guidelines the useful life for carpeting is designated to be ten (10) years. Therefore, I am reducing the landlord's claim amount for carpeting by 20% (-449.43) representing the reduced age (2 years) of the carpeting at the end of the tenancy. I find that the landlord has already mitigated the cost of the upper south bedroom carpeting. I am not allowing the landlord's claim for labour of \$168 to manage the furniture for eventual replacement of the carpeting.

The landlord is entitled to recover the \$50 filing fee paid for their application. The security deposit still in dispute will be offset from the award, for a total award of **\$2382.50** as follows:

Broken blind – living room	38.07
Cleaning costs	150.00
Carpeting – LR, main Bedrm. top bedroom. damaged beyond repair – replace – 80% - minus labour of \$168 for furniture management	1797.73
Carpeting –upper - claim 50% for replacement – mitigated	327.78
Refrigerator replacement – cosmetic / stain damage	\$180
Heat register cover – damaged – replacement	4.80
Blue paint damage – door top floor bedroom – labour	30.00
Stain vinyl flooring – labour	50.00
Stain damage to medicine cabinet – claim 25% for replacement – mitigated	56.00
Filing Fees for the cost of this application	50.00
Parties agreement re: retention from security deposit	352.77
Less balance of Security Deposit and interest	-654.65
Total Monetary Award	\$2382.50

Conclusion

I **order** that the landlord retain the full deposit and interest of \$1007.42 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$2382.50**. If necessary, this order may be filed 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*.