

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

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

Both parties attended the hearing and were given a full opportunity to present evidence and make submissions and provide sworn testimony. Neither party requested an adjournment. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 01, 2006 and ended September 27, 2010 when the tenant vacated. Rent in the amount of \$985 per month was payable. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$447.50. The parties agree that they conducted a move in inspection at the outset of the tenancy. The landlord testified that at the end of the tenancy the tenant refused to conduct a move out inspection. The tenant disagrees. The landlord testified they did not offer the tenant a second opportunity. None the less, the landlord conducted the move out inspection on their own and subsequently the tenant agrees she came into possession of a copy within 2 weeks of vacating the rental unit. The tenant was not in agreement with the results of the condition inspection report and the amounts estimated by the landlord for the claimed damages, and therefore determined not to endorse the report.

The landlord claims that the tenant caused damage to the unit, and left the unit unclean and deficient of certain items. Therefore the landlord claims the following.

Suite cleaning and garbage disposal	\$210.00
Cleaning of window coverings as per tenancy agreement	\$110.25
Partial suite painting: changed colour walls, damaged ceiling	\$480.00

Removal of a ceiling fan and replacement of light fixture.	\$60.00
Remediation of hardwood floor due to water damage and scratches	\$355.00
Total Monetary claim	\$1215.25

The landlord provided photographs in support of their claim, as well as the move out condition inspection report. The landlord did not provide any receipts in support of their claim. The tenant provided some photographs of lesser quality than the landlord and a copy of the move out condition inspection report.

The tenant does not wholly dispute the landlord's monetary claims. The tenant agrees with the landlord's claim for painting the rental unit, but claims that they supplied the appropriate paint for the work as advised by the landlord and that this cost should be deducted from the landlord's claim. The tenant claims they provided photographic proof that they purchased the same paint brand as the landlord required. The landlord testified that the tenant did not provide the same paint brand as was instructed by the landlord, thus the landlord had to purchase new paint, as well as pay for the painting labour and ancillary materials. The tenant agrees that they did not have the window coverings cleaned as stipulated in the tenancy agreement. The tenant agrees that the landlord had to attend to some cleaning in the rental unit, but not to the degree that the landlord is claiming, including cleaning behind and underneath the major appliances as identified by the landlord. The landlord testified the appliances are not on rollers. The tenant testified that in their determination, 2 hours of labour for cleaning would reasonably represents what the tenant owes for cleaning. The tenant agrees that they did not remove the ceiling fan they installed in the bedroom and replace it with the light fixture for the bedroom. The tenant agrees that they caused some water damage to the hardwood floor, but that the balance of the damage claimed by the landlord should be attributable to reasonable wear and tear. The landlord testified they did not factor reasonable wear and tear or the depreciated (useful life) of the flooring.

Analysis

Based on the testimony of the landlord and that of the tenant, and on preponderance of the evidence advanced in this matter I have reached a decision.

I find that in order to justify payment of damages under sections 67 of the *Act*, the landlord is required to prove that the tenant did not comply with the *Act* and that this non-compliance resulted in costs or losses to the landlord pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the landlord must satisfy each component of the following test:

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 *amount* required, by receipt or estimate, to compensate for damage and loss or to 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

Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the final amount and to order payment under these circumstances.

If a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs, or replacement (less depreciation or reasonable wear and tear), whichever is less. The onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

In the absence of receipts from the landlord I find that the landlord has not satisfied the test required to fully compensate for the damage and loss. However, I accept the tenant's testimony that they are responsible for some of the landlord's claimed costs; and, in concert with the landlord's photographs and their respective testimony, I find that on a balance of probabilities the landlord has sufficiently met their onus to enable a finding of partial compensation.

I accept the tenant's evidence that they did not leave the rental unit reasonably clean as required. I find that the landlord cannot claim for cleaning behind and underneath the major appliances, as identified in their claim. Residential Tenancy Policy Guideline #, in part, states that at the end of a tenancy, *"if the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it."* On the face of the evidence available, I grant the landlord **\$60** for cleaning, without leave to reapply.

I accept the testimony of the landlord and the tenant in respect to the cleaning of the window coverings. In the absence of a receipt for this cleaning, I grant the landlord **\$75** as a reasonable representation for cleaning of window coverings, without leave to reapply.

I accept the testimony of the landlord and the tenant in respect to the removal and replacement of the ceiling fan in the bedroom. In the absence of a receipt for this work or the replacement light fixture, I grant the landlord **\$35**, without leave to reapply.

I accept the testimony of the landlord and the tenant in respect to the required partial painting of the rental unit. In the absence of a receipt for this work, I grant the landlord **\$300** for partial painting of the suite inclusive of paint and materials, without leave to reapply.

I accept the testimony of the landlord and the tenant in respect to the remediation of the hardwood floor. In the absence of a receipt for this work, and in consideration of the lack of mitigation for reasonable wear and tear in the landlord's claim, I grant the landlord **\$200** for remediation of the hardwood floor, without leave to reapply.

The landlord is also entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$700**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Suite cleaning and garbage disposal	60.00
Cleaning of window coverings as per tenancy agreement	75.00
Partial suite painting: changed colour walls, damaged ceiling	300.00
Removal of a ceiling fan and replacement of light fixture.	35.00
Remediation of hardwood floor (water damage / scratches)	200.00
Filing fee	50.00
Less security deposit and interest	-462.01
Total Monetary claim	257.99

Conclusion

Having heard the evidence of the landlord and the tenant in this matter, **I Order** that the landlord retain the deposit and interest of \$462.01 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$257.99**. 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*.