

## **DECISION**

### **Dispute Codes:**

MND, MNSD, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for compensation for damages to, and cleaning of, the unit and an order to keep the security deposit.

Both parties appeared and gave testimony during the conference call.

### **Issue(s) to be Decided**

The landlord was seeking a monetary order for compensation for cleaning and repairs to the suite. The issue to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages.

### **Background and Evidence**

The landlord testified that the month-to-month tenancy began on June 10, 2003 and current rent was \$1,617.00. A deposit of \$750.00 was paid. A copy of the tenancy agreement was submitted into evidence, along with copies of written communications, written statements from the parties and witnesses, a list of expenditures and photographs of the damage. The landlord pointed out that the *Act* did not require a move-in inspection in 2003 when this tenancy began. However, the landlord did supply a copy of the move-out condition inspection report that had been completed in the tenant's absence. The landlord testified that photographs show the condition of the unit at the end of the tenancy. The landlord is seeking damages of \$5,133.56. The landlord incurred the following expenditures:

- \$238.13 cleaning and disposal
- \$499.27 plaster repairs and extra paint to cover dark walls
- \$697.88 cost of original purchase of 2 blinds
- \$2,694.99 repainting costs
- \$3,693.00 replacement costs of flooring

- \$2,080.00 to replace seven sets of matched bi-fold doors
- \$588.21 to replace 2 matching toilets
- \$116.85 cost of sink and parts
- \$368.48 to replace garburator
- \$610.40 labour for plumbing installations
- \$671.60 materials and labour to replace electrical outlets
- replacing thermostats due to damaged covers,
- replacing soiled kitchen and bathroom cabinets altered with child-proof locks
- replacing stove and hood fan

Submitted into evidence was a copy of a receipt for the original purchase of the 2 damaged blinds. The landlord stated that although additional invoices were in his possession to confirm the other expenditures being claimed, he did not submit any other invoices nor receipts into evidence nor serve them on the other party before the hearing

The landlord testified that the 44 photos taken at the end of the tenancy verify the serious damage caused by the tenant and the landlord gave testimony detailing the specific condition issues illustrated by each photo.

The tenant had submitted an evidence package containing written testimony, some photos and copies of communications. The tenant's position was that the damage pre-existed the tenancy or was due to normal wear and tear during the tenancy.

The tenant testified that the unit was left clean with the exception of the stove, carpets and the closet door with stickers on it. The tenant stated that she did not clean the self-cleaning oven as the instructions had warned against using cleaners and the stove was broken and needed to be replaced in any case. The tenant testified that the carpets, were also at the end of their useful life. The tenant testified that the landlord had advised her he intended to replace the door, so she did not remove the stickers.

### **Analysis**

In regards to the monetary claim by the landlord, section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, 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. 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 applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

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 claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did whatever was reasonable to mitigate the damage or losses that were incurred.

Section 32 of the Act requires that a tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, except for any damage from 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.

Monetary 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 depreciation of the replaced item, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37.

With respect to the flooring, doors and walls, I accept that the carpets were damaged, the walls had to be patched and repainted and one of the closet door sets had to be either scraped and cleaned or replaced altogether. I accept that the deficient condition of the above resulted in expenditures to the landlord, despite the fact that no invoices nor receipts were submitted into evidence. That being said, according to the Residential Tenancy Guideline, the average useful life of interior paint is 4 years. The

average useful life of carpeting is set at 10 years and the average useful life of doors at 20 years. Because each of the above items had exceeded its expected use, I find the landlord's claims for the painting, carpets and closet doors must be dismissed.

With respect to the need to patch the walls, I find the damage may, or may not, have been due to normal wear and tear. I find that the gouges in the drywall at the outside corners and around the doorway are likely due to normal wear and tear, given the length of this tenancy. The Guideline provides that a landlord is usually expected to fill small holes from picture hooks. However, the landlord may set reasonable rules for the tenant as to how items can be affixed to the walls, (e.g. no adhesive hangers or only picture hook nails may be used). If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage for which the tenant is liable. On the other hand, where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage, the tenant must pay for repairing the wall. A tenant is also responsible for any deliberate or negligent damage to the walls. In this instance, I find that the tenancy agreement, Schedule A, Part 2, at paragraph 3 contains a term completely prohibiting the tenant from driving any nails or tacks into exterior or interior walls. Whether the term is overly restrictive under the Act, or not, I find that the tenant should be charged for patching of the walls beyond the normal wear and tear and I set this amount at \$100.00. With respect to the claim for extra painting to cover darkened walls, I find that the colors chosen by the tenant were not extremely deep and I find that I must dismiss this portion of the landlord's claim.

With respect to the replacement of plumbing fixtures and appliances, I find that the Residential Tenancy Guidelines specifically place responsibility for the care of these items on the landlord, and holds the tenant responsible only if it is proven that there was wilful neglect on the part of the tenant or that the damage was intentional. While I accept the landlord's claim that a toilet, sink and garburator were damaged and had to be replaced, I do not find the tenant liable for the cost of items. Moreover, the average useful life of plumbing fixtures is set by the Regulation at 20 years and the prorated value would therefore be nil. The expected longevity of a garbage disposal unit is not provided in the Guideline, but I presume based on the industry average that it is likely be around 10 years. This unit, according to the landlord, was only 7 years old. However, even if I accepted that the tenant had wilfully abused the garburator unit resulting in its demise, I find that element 3 of the test for damages was not satisfied by the landlord as he failed to supply a receipt showing that this amount was spent on a replacement, and element four failed as there was no documentation submitted to confirm that an assessment had been made with respect to the possibility of trying to repair the unit. Accordingly I find that this portion of the claim is not supported.

With respect to the replacement of the electrical outlets, I find that the landlord's photo evidence indicated that one electrical outlet was marred aesthetically by spilled paint and showed that the cover of this electrical outlet also had paint splotches. The landlord testified that 12 outlets were similarly compromised, but this was not verified by any of the photographic evidence. I find that, while the paint did not affect the functionality of the outlet, the landlord felt that its appearance was spoiled and found it necessary to pay an electrician to replace several outlets and switches at a cost of \$671.40, including \$171.60 for materials and \$500.00 for labour. The landlord acknowledged that no attempt was made to scrape or sand the surface of the outlets due to the difficulty and amount of time this would take. I find that, while the marred appearance of the electrical outlet did result in some devaluation, the Regulation sets the average useful life of electrical wiring at 15 years and I find that the replacement of 27-year-old outlets and switches with new ones would be an expenditure that must be borne by the landlord, not by the tenant.

With respect to the cost of cleaning, despite the absence of any invoices, I find that the landlord was required to finish the cleaning to a reasonable standard. Given that some cleaning would be required due to the landlord's kitchen and bathroom renovations and re-flooring process, I set the tenant's share for cleaning at \$85.00.

In regard to the damaged blinds, I find that the appearance of one of the sets of blinds, although fully functional, was somewhat compromised by paint along the edge. I find that the appearance and integrity of the second blind was ruined by the tenant. Although the landlord did not actually replace the blinds, and thus incurred no costs, I find that there was a loss as the unit then had to be re-rented without the attraction of functional window coverings. The landlord had submitted evidence to confirm the original value of \$697.88 the blinds purchased in August 2008. I find that the average useful life of blinds is 10 years and these blinds were only 26 months old. Accordingly I find that the landlord is entitled to be compensated for 78% of the value of the blinds totalling \$545.00.

## **Conclusion**

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total monetary compensation in the amount of \$780.00 comprised of \$100.00 for patching the walls, \$85.00 for cleaning, \$545.00 pro-rated value of the damaged blinds and the \$50.00 cost of the application. I order that the landlord retain the security deposit and interest of \$776.56 in partial satisfaction of the claim, leaving a balance in favour of the landlord of \$3.44. I grant the landlord a monetary order under section 67 of the *Act* for \$3.44. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: March 2011.

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Residential Tenancy Branch