

DECISION

Dispute Codes: *MNSD, MND, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, repair to the rental unit, loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to loss of income and to recover the filing fee?

Background and Evidence

The tenancy started on July 01, 2008 and ended on November 26, 2010. The monthly rent was \$1,700.00. Prior to moving in, the tenant paid a security deposit of \$850.00 and a pet security deposit of \$850.00. The rental unit was a new apartment and the tenant was its first occupant.

A move out inspection was conducted on December 05, 2010. Some damage to the walls and stains on the carpet were noted. The tenant agreed to the cost of the removal of hooks from the ceiling and to the removal of stains on the carpet.

The tenant agreed that there was damage to the walls and stated that she filled the holes and painted over. She used the same shade of paint after getting the brand and shade information from the building manager. The landlord stated that the job was not properly done and hired a professional to redo the work. The landlord filed a receipt in the amount of \$739.20 for the total of labour and materials.

The tenant had the carpets cleaned professionally, but agreed that there were two stains that were not removed. The landlord had the stains removed and filed a receipt in the amount of \$95.20.

The landlord also stated that the kitchen and washrooms needed six hours of cleaning and that the grout in two areas needed to be replaced. The tenant agreed that the door of the stainless steel refrigerator had scratch marks from magnets.

The landlord is claiming the following:

| | | |
|----|-----------------------------|-------------------|
| 1. | Repair and paint walls | \$739.20 |
| 2. | Paint | \$72.84 |
| 3. | Painting materials | \$19.13 |
| 4. | Six hours of cleaning | \$240.00 |
| 5. | Replace grout | \$180.00 |
| 6. | Carpet cleaning | \$95.20 |
| 7. | Loss of income for December | \$1,800.00 |
| 8. | Replace refrigerator door | \$1,127.00 |
| | Total | \$4,273.37 |

Analysis

Repair and paint walls \$739.20

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting of the walls. As per this policy, the useful life of interior painting is four years. The rental unit was new and the tenant was its first occupant. By the end of the tenancy, the painting had approximately 1.5 years of useful life left. The landlord filed a receipt in the amount of \$739.20 for the repair and painting of the walls. This amount includes all labour and materials. Accordingly, I find that the landlord is entitled to \$277.20 which is the prorated value of the remainder of the useful life of the painting.

Paint \$ 72.84 and Painting materials \$ 19.13

As stated above, the receipt for painting includes material and therefore, the landlord's claim for paint and materials is dismissed.

Six hours of cleaning \$240.00

The landlord stated that the kitchen and washrooms required six hours of cleaning and he did so himself at an hourly rate of \$40.00. The tenant stated that she had cleaned the unit well and the only item that may have needed additional cleaning (15 – 30 minutes) was the refrigerator. The move out inspection report indicates that the condition of the kitchen and washrooms was fair. The landlord has not filed any other evidence to support his claim for six hours of cleaning. Therefore, based on the tenant's testimony, I will award the landlord the cost of 30 minutes of cleaning in the amount of \$20.00.

Replace grout \$180.00

The landlord stated that the grout needed to be replaced in two areas and is claiming \$180.00 for 4.5 hours of labour. The landlord stated that he did it himself and therefore did not file a receipt. I find that on a balance of probabilities, the wearing out of grout in two areas is a result of normal wear and tear and was not caused by negligence on the part of the tenant. Therefore the landlord must bear the cost of replacing the grout.

Carpet cleaning \$95.20

The tenant agreed that there were two stains that were left behind after she had the carpet cleaned professionally. The landlord filed a receipt and is therefore entitled to the cost of cleaning in the \$95.20.

Loss of income \$1,800.00

The tenant stated that she gave adequate notice to the landlord to end the tenancy and assisted him in showing the unit to prospective tenants. The landlord stated that the condition of the walls was a factor in not getting a renter for December. The tenant argued that not one of the tenants that she showed the unit to complained about the state of the walls.

The landlord stated that due to the time it took to repair and paint the walls, he was unable to find a tenant for December. The landlord was aware of the condition of the walls prior to the end of the tenancy as he had multiple conversations with the tenant regarding the repair and shade of paint.

When a landlord is claiming damages, he has a legal obligation to do whatever is reasonable to minimize the loss. This duty is commonly known in the law as the duty to mitigate. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In this case the landlord was aware of the condition of the walls, but waited the whole first week of December before he started repairs.

I find that the landlord did not take steps to minimize his loss of income and is therefore not entitled to loss of income for December.

Replace refrigerator door \$1,127.00

The tenant agreed that the door of the refrigerator was scratched by magnets. The appliance is functional and the damage is cosmetic. The landlord made minimal efforts to repair or buff out the damage and is looking to replace the door. The landlord has filed a quotation for the replacement of the door in the amount of \$1,127.00.

I find that while the door is scratched, this damage does not affect the functionality of the appliance. However, the scratches have reduced the value of the refrigerator and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the landlord a minimal award of \$100.00.

I find that the landlord has established a claim as follows:

| | | |
|----|-----------------------------|-----------------|
| 1. | Repair and paint walls | \$277.20 |
| 2. | Paint | \$0.00 |
| 3. | Painting materials | \$0.00 |
| 4. | Six hours of cleaning | \$20.00 |
| 5. | Replace grout | \$0.00 |
| 6. | Carpet cleaning | \$95.20 |
| 7. | Loss of income for December | \$0.00 |
| 8. | Replace refrigerator door | \$100.00 |
| | Total | \$492.40 |

Overall the landlord has established a claim of \$492.40, which is a small portion of his total claim of \$4,273.37 and is therefore not entitled to the recovery of the filing fee. I find that the tenant is entitled to the return of the security and pet deposits (\$1,700.00) plus accrued interest (\$12.82) with a deduction of \$492.40 towards the landlord's claim.

Conclusion

I hereby order that the landlord return \$1,220.42 to the tenant within 15 days of receiving this decision.

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: April 15, 2011.

Residential Tenancy Branch