



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damages and cleaning of the rental unit, to keep all or part of the security deposit, for compensation under the Act and the tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The parties signed a standard form tenancy agreement on October 2, 2009. The rent payable was \$1,220.00, on the first day of each month. The Tenant paid a security deposit of \$610.00 on October 2, 2009. I note that no interest is payable on security deposits paid in that or subsequent years to present.

At the outset of the tenancy an incoming condition inspection report was performed.

Significant testimony was received regarding the circumstances surrounding the outgoing condition inspection report.

The Agent for the Landlord testified that the Tenant was given two opportunities to attend the outgoing condition inspection report.

The Agent explained that the Tenant had cancelled the first appointment and then it was difficult to find a mutually agreed time to conduct the outgoing inspection. The Agent testified that the Tenant was asked to send an agent or proxy to conduct the inspection.

The Tenant informed the Agent he would have his mother attend at noon on the last day of the tenancy, at the time the outgoing condition inspection report was to be performed.

The Tenant testified he was only given one opportunity. The Tenant testified that he had to cancel the first appointment for personal reasons. The Tenant testified he sent his mother at the appointed time for the second opportunity, however, she was only there to drop off the keys for the rental unit.

The Landlord is claiming for cleaning and to repair damages at the rental unit. The Landlord alleges it took four hours to complete the cleaning of the rental unit, which included the bathroom, kitchen and appliances.

The Landlord alleges the Tenant left the rental unit with a deep gouge, over one foot long on a wall. On another wall the Tenant left a mirror, in the shape of a baseball player, which was glued to the wall and had to be removed. The walls had many holes from pictures or posters being hung. There were footprints and scuff marks left on some of the walls. The mantle also had damage done to it. The Landlord alleges that due to the condition the walls were left in by the Tenant, the walls had to be repaired and painted.

In evidence the Landlord submitted photographs, copies of the condition inspection reports, invoices, correspondence and the tenancy agreement.

The Tenant disagrees with the Landlord's claims. The Tenant testified that the Landlord is simply complaining about a lot of little things. The Tenant alleges he paid a maid service to clean the property, although he provided no receipts in evidence. He alleges he was told not to provide evidence for the hearing by someone. He testified no one told him he could not hang posters in the rental unit, which accounts for the many pin holes in the walls.

Analysis

Based on the testimony, evidence, photographs and on a balance of probabilities, I find that the Tenant breached the Act and tenancy agreement when he did not clean the unit, or make necessary repairs, and this has caused losses to the Landlord.

Under section 37 of the Act, the Tenant was required to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

In this instance, I find the Tenant damaged the walls beyond reasonable wear and tear. For example, it is not reasonable wear and tear to glue a mirror to a wall and then leave it up when vacating the rental unit. I also find the Tenant failed to clean the rental unit to a reasonable standard. For example, the refrigerator was left dirty.

I further find that the Tenant was given two opportunities to attend the outgoing condition inspection report. The Tenant sent his mother to the rental unit at the time the outgoing condition inspection report was being performed. However, the Tenant's mother did not participate in the report. Regardless if the Tenant told her to participate or not, this was not the fault of the Landlord.

The Tenant could have easily asked his mother, or someone else, to represent him at the outgoing report. He chose not to do so, in order to claim he was not given the two opportunities. I find the Tenant cannot rely on his refusal to participate in the report to claim he was not given adequate opportunity to participate in the report.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I find that the Landlord has established a total monetary claim of **\$980.48**, comprised of \$112.00 in cleaning costs, \$818.48 for repairs and painting, and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$610.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$370.48**.

This order 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: May 4, 2011.

Residential Tenancy Branch