



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

The Tenant applied on May 31, 2011 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of double the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 6, 2011 for:

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

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2010 and ended on April 30, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$350.00. The Tenant states that the forwarding address was provided to the Landlord by way of registered mail posted on May 18, 2011. Both Parties agree that the envelope for this mail obscured the name of the addressee from view by a postal stamp.

The Landlord states that as there was no identifiable name on the envelope indicating who the intended recipient was and as both the Landlord and the Tenant shared the same address during the tenancy, the Landlord did not accept the mail. The Tenant states that the letter was returned and the Tenant subsequently provided the forwarding address by way of service of the application and Notice of Hearing sent by registered mail on May 31, 2011. The Tenant provided as evidence a photocopy of the envelope that was returned but not the contents. The Tenant claims return of double the original security deposit in the amount of \$700.00, costs related to the registered mail service for the Hearing process in the amount of \$13.70 and the Tenant's cost to provide the damage deposit and first month's rent by money order in the amount of \$6.00.

The Landlord states that at the beginning of the tenancy, the Tenant was given approval to paint the unit, and in particular to paint a portion of the unit the color mauve, as long as the Tenant returned the mauve coloured walls to a the pre-existing neutral color at the end of the tenancy. The Landlord states that at the end of the tenancy, the Tenant failed to return the mauve coloured walls back to the neutral color and overall did a poor job of painting the unit such that the Landlords were required to sand and repaint the entire unit. The Landlord claims \$400.00 in costs to repaint the unit and provided an invoice setting out the work completed by the painter for this amount.

The Tenant states that the Landlords were fully involved while the Tenant painted the suite and frequently came in and checked the progression of the painting. The Tenant states that the Landlords instructed her to use latex paint, approved the colors and color scheme and did not tell her that any of the previous paint had been enamel. The Tenant states that the latex paint did not cover the door very well and when she asked the Landlord about the problem was told just to cover the door with another layer of paint. The Tenant states that the Landlords told her not to move the appliances as the cords were not long enough. The Tenant's witness stated that she assisted with the painting, had been present when the Landlords attended during the painting and never heard the Landlords complain about the job. The Tenant states that she offered to repaint the unit several times but that the Landlords always told her not to do this.

Analysis

The person claiming damages from a breach of an agreement must prove on a balance of probabilities that the other party breached the agreement, that the loss was reasonably foreseeable and that the loss resulted from the breach of the agreement. The party making a claim must also show that they took reasonable steps to ensure that the loss could not have been prevented and that steps were taken by the person suffering the loss to keep the loss as low as possible. There is no dispute that the Tenant was given permission to paint the unit, including permission to paint a portion of the unit mauve. The Landlord states however that this permission was provided on the basis that the Tenant would return that portion of the unit painted mauve back to a neutral color at the end of the tenancy. The Tenant did not make any submission regarding this part of the dispute. As a result, I find that the Landlords have proven on a balance of probabilities that the Tenant breached this part of the agreement by not returning the mauve coloured walls to a neutral color at the end of the tenancy. The Landlord is therefore entitled to an amount equalling half of the amount claimed or \$200.00.

The Landlord states that in addition the Tenant did a poor job of painting such that the entire unit required painting at the end of the tenancy. I accept the Tenant's evidence that the Landlords were fully involved during the painting of the unit, had many opportunities to raise objections on the job at this time and failed to do so. Accordingly, I find that the loss in relation to the other portions of the unit not painted mauve being claimed at the end of the tenancy was not reasonably foreseeable to the Tenant. Further, as the Landlords were fully involved during the painting of the unit, I find that the Landlord had opportunities to mitigate losses that arose from a poor paint job during the tenancy and failed to do so. Accordingly, I dismiss this part of the Landlords' claim.

Section 38 of the Act requires a landlord to return a security deposit to a tenant within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. This section further requires that where the

landlord has not met the obligation to return a security deposit within the required timeframe, the landlord must pay the tenant double the amount of the security deposit. There is no dispute that the envelope mailed to the Landlord that the Tenant states contained her forwarding address had the name of the intended recipient covered. As both the Landlord and the Tenant shared this address, it would be reasonable in this circumstance for the Landlord not to accept mail that may not belong to her. Accordingly, I find that the Landlord received the Tenants forwarding address with the documents served for this hearing. As the Landlords filed their application within 15 days of receipt of the forwarding address contained in the documents, I find that the Tenant is not entitled to return of double the security deposit. As the remainder of the Tenant's claim arises from the cost of entering into dispute resolution or arises from the requirements of entering into a lease agreement, and not in relation to the tenancy itself, I dismiss the Tenant's application.

As the Landlords claim had merit, I find that the Landlord is also entitled to recovery of the filing fee for a total entitlement of \$250.00. I order the Landlords to deduct this amount from the security deposit and return the remaining amount forthwith to the Tenant.

Calculation for Monetary Order

Damages	\$200.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-350.00
Total Monetary Award	\$100.00

Conclusion

The Tenant's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$100.00**. 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*.

Dated: June 30, 2011.

Residential Tenancy Branch