

DECISION

Dispute Codes:

MNSD, FF.

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to retain the security deposit for costs incurred to paint the rental suite. The landlord also applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing the landlord requested that her application be amended to include the full cost of the painting which exceeded the amount of the security deposit. The landlord had filed an invoice and had served a copy of it to the tenant. I allowed the landlord to amend her application.

Issues to be decided

Is the landlord entitled to the cost of painting the rental unit? Is the landlord entitled to retain the security deposit in partial satisfaction of her claim? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on February 01, 1998 and ended on January 31, 2011. The monthly rent at the end of the tenancy was \$1,469.00. Prior to moving in, the tenant paid a security deposit of \$560.00.

The landlord testified that the tenant painted the unit in colours that were not permitted by the landlord. In addition, there was some graffiti on the door and walls of one bedroom. The landlord provided photographs to support her verbal testimony. The landlord also filed an invoice in the amount of \$1,040.00 to paint the unit.

The tenant agreed that she had painted the unit in colours that were brighter than the standard for the rental unit and that her children had drawn on the walls and door. She also stated that when she moved in the walls were not painted and there was graffiti on the walls.

She painted the unit at her own expense and through the 13 years of tenancy, the landlord did not paint the unit at all. The tenant stated that a coat of primer would conceal the graffiti on the walls and door.

Analysis

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior painting is four years. The area manager had assumed her role three years ago and did not have records of when the unit was last painted. Even if the unit was painted just prior to the start of the tenancy, the landlord would have had to paint the unit at least three times for the duration of the 13 year old tenancy. The landlord did not paint the unit at all.

The photographs filed by the landlord confirm that the tenant painted the unit in brighter colors and also depicted the drawings on the walls and door. However, I find that the drawings are minimal. Based on the length of the tenancy, I find that the landlord must bear the cost of painting the unit and therefore her application for a monetary order for \$1,040.00 and to retain the security deposit is dismissed.

Since the landlord has not proven her case, she must bear the cost of filing this application.

The landlord currently has in her possession a security deposit of \$560.00 plus \$72.15 in accrued interest for a total of \$632.15. The landlord must return this amount to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord's application is hereby dismissed. I order the landlord to return the security deposit plus accrued interest to the tenant.

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 02, 2011.

Residential Tenancy Branch