



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a townhouse. Pursuant to a written agreement, the tenancy started on July 15th, 1995 and ended March 31st, 2011 at a rate of \$1390.00 per month. The tenant originally paid a security deposit of \$547.50 which, with accrued interest was re-adjusted by the landlord at \$650.14. Condition inspection reports were completed at the start and the end of the tenancy.

In her documentary evidence, the landlord provided 11 photographs showing various scuffs, scratches and holes in the walls, dirt on the stove and a broken piece of the refrigerator crisper. She provided a copy of the tenant's letter dated March 8th, 2011 in which she advised the landlord that she would vacate the unit by March 31st, 2011.

The landlord testified that the tenant gave her late written notice and that the unit was not re-rented until May 20th, 2011. The landlord said that because the tenant painted the unit, it had to be re-painted. The landlord said that she completed the condition inspection report in the presence of the tenant on March 31st, 2011, but that she did not give her a copy because she did not have a photocopier. The landlord provided receipts for cleaning and painting, and made a monetary claim as follows:

- Loss of rental income for one month:	\$1390.00
- Suite cleaning:	\$ 120.00
- Carpet cleaning:	\$ 224.00
- Cleaning materials:	\$ 14.40
- Paint:	\$ 275.00
- Paint materials:	\$ 96.25
- Repairs:	\$ 50.00
- Sub-total:	\$2169.65
- Less security deposit:	\$ 650.14
- Total:	\$1519.51

The landlord said that the carpets were installed in 1993, and that the unit was last painted in 1995.

Concerning the photographs, the tenant testified that the one identifying clips on the ceiling was a pre-existent, and confirmed this assertion by pointing to the move-in condition inspection report. The tenant pointed to another photograph showing a portion of the tiled flooring, and stated that there were no tiles in her suite.

Concerning the damaged crisper, the tenant stated that the landlord replaced the original fridge in 2002 with a used one, and that the crisper was already in that condition. The tenant agreed that she did not patch holes in the bathroom and that she did not fill other holes on the walls. She said that she made several requests to the landlord to paint the unit and addressed concerns with the aging carpets; however she said that the landlord did not tend to these concerns. She said that she painted the unit herself, and that she missed a spot behind a wall unit. She said that the carpets were still the original ones since 1978.

The tenant argued that the landlord came on March 31st, 2011 while she was cleaning the unit, told her to stop, and proceeded to take photographs and make notes. She said that the landlord gave her a completed form concerning the repairs and the security deposit on a separate form, but that she never signed or even saw the condition inspection report.

The tenant stated that she gave the landlord a written notice to end tenancy on January 31st, 2011 for the end of February. She said that she discussed with the landlord the feasibility to find other accommodations with the same landlord, but that these efforts were not successful. She agreed that the notice dated March 8th, 2011 was late, but stated that the landlord knew that she was leaving; that the landlord could have minimized her loss of rental income for April by advertising sooner; and that she is aware of case law in favour of these mitigating circumstances.

Concerning the tiled photograph, the landlord replied that she was not sure and said it could have been a mistake; then she corrected herself that the photograph in question pertained to the wall and not the tile.

Analysis

Sections 23 and 35 of the Act place the onus to complete condition inspection reports on the landlord. The regulations also provide in part that the landlord must give the tenant a copy of the report within 7 days after the inspection is completed. In this case, the landlord completed the move-out condition inspection report while the tenant was in the unit. The tenant did not receive a copy of the report and I do not accept the absence of a photocopier as valid reason for not informing and providing the tenant with a copy as required by the regulations.

The *Residential Policy Guidelines* provide an estimated useful life for various items, including finishes in rental accommodations for reasonable wear and tear. In the case of paint the useful life is 4 years and for carpets 10 years. As such the paint and carpets in this unit were well beyond their useful life.

For these reasons, I find that the landlord failed to establish that the damages and repairs were beyond reasonable wear and tear, with the exception of the holes which the tenant conceded to. For these damages I grant the landlord her claim for repairs of \$50.00.

Concerning the loss of rent; Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. Section 7(2) of the Act also states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. While the tenant provided short notice, I have no evidence before me showing that the landlord's loss of rental income was due to the short notice, or what the landlord did to mitigate that loss. Therefore I award the landlord a loss of rental income equivalent to two weeks for \$695.00

Conclusion

The landlord established a claim of \$695.00 for the loss rental income, and \$50.00 for damages for a claim totalling \$745.00.

I authorize the landlord to retain the tenant's \$650.14 security deposit for a balance owing of \$94.86. Since the landlord was partially successful, I award the landlord \$25.00 towards partial recovery of the filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$119.86.

This Order may be registered 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: July 20, 2011.

Residential Tenancy Branch