

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord entered into written evidence a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on the tenant's door on April 8, 2009. The landlord entered into written evidence a copy of the customer receipt containing the Canada Post Tracking Number for the dispute resolution hearing package sent to the tenant on April 18, 2011 by registered mail. The landlord also submitted a copy of the Canada Post tracking information for this registered mailing which indicated that the package was successfully delivered to the respondent on April 21, 2011. I am satisfied that these documents were served to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on September 1, 2006. By the time the tenant vacated the rental in late April 2009, monthly rent was set at \$525.00, payable in advance on the first of each month. No security deposit was paid for this rental unit.

The landlord entered into written evidence copies of the joint move-in condition inspection report of August 23, 2006 and the landlord's May 2, 2009 move-out condition inspection report. The landlord testified that a joint move-out inspection was not conducted because the tenant abandoned the rental unit before April 30, 2009 without contacting the landlord regarding a joint move-out condition inspection.

The landlord applied for a monetary award of \$996.42 plus recovery of the landlord's \$50.00 filing fee. The landlord's application for a monetary award included:

Item	Amount
Hauling of Debris Remaining from Tenancy	\$348.08
Carpet Cleaning	115.50
Painting	532.84
Total Monetary Award Requested	\$996.42

The landlord provided receipts for each of the above items and photographs of the condition of the premises at the end of this tenancy.

The landlord testified that the landlord actually incurred costs of \$1,141.78 to repaint the rental unit. The landlord claimed that the damage caused by the tenant exceeded what could be expected through reasonable wear and tear for this rental unit. He testified that the tenant added wallpaper during this tenancy. He also said that smoking had damaged the walls during this tenancy. He testified that the joint move-in condition inspection report noted that the rental unit was newly painted before the tenancy commenced. The landlord testified that the landlord arrived at the \$532.84 amount requested on the basis of painting being required 28 months before the landlord would normally have been expected to repaint the premises after 60 months of occupancy. Thus the \$532.84 charge for painting resulted from the following calculation:

$$\$1,141.78 \times 28/60 = \$532.84$$

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. The party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The onus is on the landlord to prove on the balance of

probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the undisputed evidence submitted by the landlord, I find that the landlord is entitled to a monetary award of \$348.08 for hauling debris that remained after this tenancy and \$115.50 for carpet cleaning.

I also find that the landlord is entitled to a monetary award for damage caused by the tenant that required repainting of the rental unit. Residential Tenancy Policy Guideline No. 37 establishes a 4 year (48 month) cycle for painting interior walls. Rather than the 60-month cycle employed by the landlord for calculating the amount charged for painting, I find that a 48-month cycle should be used. As such, I find that the landlord is entitled to a monetary award of \$380.59 for painting repairs. This amount results from my finding that the painting was required at the end of this 32 month tenancy, or 16 months before the 48 month repainting would normally have been required under typical wear and tear (i.e., $\$1,141.78 \times 16 \text{ months} / 48 \text{ months} = \380.59).

Since the landlord has been successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee for this application.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord a monetary award for damage to the rental unit and to recover the landlord's filing fee:

Item	Amount
Hauling of Debris Remaining from Tenancy	\$348.08
Carpet Cleaning	115.50
Painting ($\$1,141.78 \times 16 / 48 = \380.59)	380.59
Filing Fee	50.00
Total Monetary Order	\$894.17

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.

Residential Tenancy Branch