

DECISION

Dispute Codes MND, MNSD, 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 11:16 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 Canada Post Tracking Number and Customer Receipt to support her claim that the landlord sent a copy of the dispute resolution hearing package to the tenant by registered mail on May 18, 2011. I am satisfied that the landlord served this package and the subsequent written evidence package 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the most recent tenancy with this tenant commenced on January 1, 2011. Monthly rent for this one-year fixed term tenancy was set at \$1,050.00, payable in advance on the first of each month. The landlord said that she continues to hold the tenant's \$525.00 security deposit paid when this tenancy commenced.

The landlord said that a joint move-in condition inspection with the tenant was conducted on or about January 1, 2011. She said that the tenant participated in a joint move-out condition inspection on or about May 15, 2011, but that the tenant refused to sign the report. She said that she provided copies of both of these reports to the tenant.

The landlord testified that the tenant vacated the rental unit by May 31, 2011. She said that extensive repainting was required because two of the rooms were painted dark green and dark blue without the landlord's permission. She entered into evidence photographs of these rooms taken at the end of this tenancy. These photographs revealed many nail holes and patches which required repair and repainting.

The landlord applied for a monetary award of \$1,000.00 for damage caused during this tenancy. In the landlord's application for dispute resolution, the landlord indicated that she was seeking this monetary award for the extra cost incurred to repaint over these rooms. She entered into written evidence receipts for the following items:

Item	Amount
Painting Supplies	\$190.42
Labour for Patching and Painting	800.00
Partial Payment for Labour	300.00
Removal of Carpets & Work on Kitchen Cabinets	250.00

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. In order to claim for damage or loss under the *Act*, 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. The claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, 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.

In the absence of any oral or written evidence to the contrary from the tenant, I accept the landlord's assertion that the painting of parts of the rental unit during this tenancy caused damage that required repair by the landlord. The landlord testified that a fresh coat of paint is provided whenever a new tenant moves into one of the rental units in this property. However, she gave evidence to support her claim that these repairs exceeded what would normally be expected during a tenancy of this duration and that significantly more coats of paint were required to cover the colours used by the tenant(s) and the damage caused during this tenancy. She said that this work was conducted during June 2011 and that she could not re-rent this suite until July 2011.

Based on the evidence submitted, I find that the landlord has submitted receipts to demonstrate that the repainting damage caused by the tenants was \$990.42 (i.e., \$190.42 for supplies and \$800.00 for labour). However, some of this repainting would have been conducted as a matter of course by the landlord even if no damage had occurred. Rather than a single coat of paint that would normally be required, I find that a coat of primer and two coats of paint would have been required to cover the unauthorized paint job that occurred during this tenancy. As such, the landlord's costs of repainting this suite at the end of this tenancy would have been approximately one third of that incurred if the painting were only to cover reasonable wear and tear arising out of this tenancy. Consequently, I reduce the monetary award issued to the landlord by one-third to recognize that some repainting would have been conducted at the landlord's expense under normal circumstances. I issue a monetary award of \$660.28 to the landlord for repainting and repairing this suite ($\$990.42 \times 66.67\% = \660.28).

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover damage caused during this tenancy and to recover the filing fee for this application.

Item	Amount
Damage Arising from this Tenancy	\$660.28
Less Security Deposit	-525.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$185.28

This monetary award also allows the landlord to retain the tenant's security deposit.

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*.