



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, MNDC, CNR, OLC, ERP, RP, OPT, AAT

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a Notice to End Tenancy; a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for an order for the landlord to comply with the Act, regulation, or tenancy agreement, to make emergency repairs and to make repairs to the unit; for an Order of Possession of the rental unit; and to allow access to the unit for the tenant or the tenant's guests.

By the landlord: as an application for a Monetary Order for damage to the unit; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for unpaid rent; to keep the security deposit; and to recover the filing fee associated with his 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.

At the outset, it was established that the tenant moved out of the rental unit on July 14th, 2011. Therefore the tenant's application for an Order of Possession, to make repairs, to allow access to the unit, and cancellation of a Notice to End Tenancy is dismissed.

Issue(s) to be Decided

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

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 an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started May 5th, 2011. The rent of \$1050.00 was payable on the first of each month and the tenant paid a security deposit of \$575.00.

The landlord testified that a condition inspection report was completed on move-in; the report shows that the walls and ceilings of the unit were not painted, and that they had a "couple of marks". The landlord stated that a move-out inspection was not completed because the tenant left. He said that the tenant used the wrong paint and painted over some of the fixtures while repainting the unit. The landlord said that the existing paint was two years old. He said that the carpet in the 75 square foot den was stained, that it was 10 years old, and needed to be replaced.

In his documentary evidence, the landlord provided a quote dated July 25th, 2011 for a number of repairs and for work which included, but was not limited to: cleaning and painting the whole unit; repairing and replacing various fixtures; caulking; and installing new laminate flooring for the sum of \$3950.00. The landlord was not able to distinguish the amount of repairs that was directly connected to, and should be ascribed against the damages caused by the tenant.

The landlord provided a pest control inspection dated June 26th, 2011, stating that there was no evidence of mite infestation or mould; it reported the presence of clothes and

food scattered throughout the rental unit, and one silverfish found under the sink. The landlord provided 28 photographs to support the report concerning clothes and food left behind, as well as scratches and dents on the walls, trims, and laminate flooring.

The landlord also provided a written statement dated July 20th, 2011 from the previous tenant who states in part that between November 2010 and April 2011 there was never an issue with bug infestation, that the apartment was cleaned regularly, and that the tenant spent 4.5 hours cleaning before moving out.

Concerning the unpaid rent, the landlord amended his claim from one full month to half a month's rent for \$525.00.

The tenant testified that the condition inspection report in the landlord's evidence was completed by a real estate agent, and that she was not present during the inspection. She stated that there were pre-existent marks and holes in the walls, and that the carpet in the den also had stains. She stated that she only painted one wall and not the whole unit. She said that there was condensation leaking from the ceiling above the dryer vent, and that she experienced significant health problems due to airborne mould. She stated that she also had scabies; she said that she would get better if she moved out for a few days, but that her condition would worsen as soon as she returned. Concerning the condition of the unit on move-out, she said that she hired movers and did not dispute the photographs of the items left behind.

In her documentary evidence, the tenant provided voluminous medical reports and hotel receipts. She was offered an opportunity to breakdown her claim of \$6700.00; however she surmised that it consists of relocating expenses and medicinal costs.

The landlord disagreed concerning the severity of the presence of mould alleged by the tenant; he stated that the building manager made him aware of the condensation leak and that he had it fixed immediately. He said that no problems were reported by the previous or the new tenants.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim for damages against the tenant, and on the tenant to prove her claim of mould, leaks, and bug infestation.

The tenant provided medical reports and prescriptions for skin related irritations, however there was no evidence linking these reports with mould in the unit. The landlord's pest control report does not support the tenant's allegations concerning bug or mite infestation. The tenant stated that she had scabies; scabies are transferred through human contact and would have no connection with ventilation or mould problems. I do not find sufficient evidence to prove, on a balance of probabilities, that the landlord breached the Act or the tenancy agreement; nor do I find that condensation or inadequate ventilation above the dryer support the tenant's claim for medication, relocating, accommodations and related expenses. If the tenant is more sensitive to airborne mould than the average person, it is no fault of the landlord. Once he was made aware of the problem, the landlord took steps to fix the problem within a reasonable amount of time.

Turning to the landlord's claim; the landlord provided a quote for the sum of the work submitted in his claim. The landlord was unable to determine how much of this cost should be ascribed for damages caused by the tenant. The photographs provide evidence of some damage, but they fail to make a distinction between the condition of the unit at the start and the end of the tenancy. On the evidence I find the condition

inspection report unreliable, particularly when the report identified pre-existing deficiencies.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. I have considered reasonable wear and tear and the landlord's claim for paint and new flooring. I am satisfied on the landlord's testimony that some damage was caused by the tenant; however I am not persuaded that replacing the whole carpeting and repainting the whole unit are necessary, or that they are reasonable ways to fulfill the landlord's statutory obligation to mitigate his loss. The landlord did not state that the carpet could no longer be used or why it could not be cleaned. The photographs do not support that it needed replacement with laminate, or that the entire unit needed to be repainted.

Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. The landlord's quote for \$3950.00 is combined and not specific to each task identified on the quote. On the tenant's own testimony I am satisfied that the tenant is responsible for a degree of damage caused by the movers; therefore I award the landlord an arbitrary amount of \$500.00 towards this portion of his claim.

Concerning unpaid rent, Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. On the parties' evidence concerning unpaid rent at the end of the tenancy I grant the landlord half a month's rent as claimed.

Conclusion

The tenant's application is dismissed.

The landlord established a claim of \$1025.00. I authorize the landlord to retain the tenant's \$575.00 security deposit for a balance owing of \$450.00. Since the landlord was partially successful, I award the landlord partial recovery of the filing fee for \$25.00. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$475.00.

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: August 12, 2011.

Residential Tenancy Branch