

## **Decision**

### **Dispute Codes:**

MND, MNDC, MNSD

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for unpaid rent, compensation for damage to the unit and money owed or compensation for damage or loss under the Act.

Both parties appeared and gave testimony..

### **Issue(s) to be Decided**

The landlord was seeking a monetary order and to retain the security deposit for cost of cleaning and repairs in the amount of \$1,705.00.

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.

### **Background and Evidence**

The tenancy began on April 1, 2010 and ended on May 30, 2011. The rent was \$800.00 per month and the tenants paid a security deposit of \$400.00. No written tenancy agreement was in evidence. No move-in and move-out condition inspection reports were submitted into evidence.

The landlord testified that the tenant's written forwarding address was received on June 13, 2011. The application was made on June 27, 2011.

The landlord testified that the building was approximately 14 years old and he purchased it near the end of 2009. The landlord testified that when the tenants vacated, they left the unit in need of cleaning and repair. The landlord's claims stated in the application included:

- \$50.00 for repair of bifold door
- \$500.00 to repair linoleum in kitchen

- \$200.00 to shampoo the carpets
- \$400.00 to repair the damaged counter
- \$30.00 to replace the window screen
- \$300.00 to paint and patch walls in the bedrooms, living room and bathroom
- \$75.00 for a missing television set
- \$150.00 for general cleaning.

The landlord provided photos of the unit when he purchased it and “after” photos showing specific areas of damage. the landlord also provided numerous receipts for purchases, to which he referred during his testimony. The landlord acknowledged that he did not complete a move-in inspection report at the start of the tenancy, but pointed out that the unit was in a newly refurbished condition. The landlord testified that the unit was never inhabited by any other tenants prior to these tenants. The landlord stated that, at the end of the tenancy, he had scheduled a move-out inspection, and although the tenant was made aware of the date, the tenant failed to show up. The landlord testified that the inspection was conducted without the tenant’s participation and without completing a report on the approved form. The landlord discussed each claim for damage and gave detailed testimony.

With respect to the bifold door, the landlord testified that it was working well when the tenancy started but the track needed to be replaced when the tenants vacated. The landlord testified that the door was approximately 14 years old. The landlord testified that the linoleum in the kitchen had some minor damage when the tenant moved in. However, there were significant scratches and a hole in the flooring when the tenancy ended, necessitating replacement of the entire floor at a cost of \$500.00. The landlord pointed out what appeared to be a large stain on the carpet and stated that carpet-cleaning was necessary to remove it. The landlord stated that the tenants left a hole in the bathroom counter which irreparably damaged it.

In regard to costs of painting, the landlord testified that over \$200.00 was spent on paint to re-paint rooms that the tenant had transformed to a vibrant shade, contrary to a verbal agreement between the parties restricting the tenant to neutral shades in painting the walls and requiring that any room that was painted in a colour that was considered as being too extreme, would be restored to a neutral tone by the tenant. The landlord also testified that the tenant left numerous holes in the drywall that had to be patched, including serious damage to walls in the bathroom by putting up racks and moving the mirror. The landlord supplied copies of receipts for purchases and an invoice for labour in the amount of \$450.00.

The landlord acknowledged that at the end of this tenancy, the rental unit had been re-rented to another party in the condition that the tenants had left it in. The landlord

testified that the repairs and renovations had not been completed until after the subsequent short-term tenancy had ended. The landlord felt that the respondents should still be held responsible for compensating them for the damage they caused.

The tenants disputed all of the landlord's claims. The tenant testified that the landlord had failed to complete a move-in condition inspection report in contravention of the Act and had not afforded the tenant a valid opportunity to participate in the move out condition inspection. The tenant testified that by failing to follow the Act, the landlord had deprived them of their right to rectify any deficiencies, such as filling the small holes in the walls, shampooing the carpet and any other concerns that the landlord had later made an issue of. The tenant testified that, by the time the landlord's concerns had been brought to their attention, it was too late for them to address them.

The tenant testified that when they moved in, they were given permission to put up pictures and wall hangings properly affixed to the wall and no mention was made about an expectation to patch the holes at the end of the tenancy. The tenant testified that the landlord had not raised any objection to the racks they put up in the bathroom, which they felt were necessary for their use and these items were still fastened to the wall when they left. The tenant testified that the holes in the bathroom wall shown in the photos were not created by them but by the landlord pulling the racks down.

The tenant testified that the landlord allowed them to paint the bedroom and living room walls and they did so in what they considered to be conservative neutral colours. The tenant pointed out that no concerns about these colours had been expressed by the landlord during the tenancy and the colour would not have caused the landlord a loss if he had not decided to repaint.

The tenant testified that they were not aware of additional damage caused to the kitchen linoleum during their tenancy and stated that the floor had condition issues when the tenancy began. The tenant testified that the closet door track was not functioning well when they took tenancy, so they did not use that door. The tenant stated that they knew nothing about the damage to the bathroom counter top. The tenant's position is that the unit was subject to normal wear and tear, for which they would not be responsible under the Act.

With respect to the carpet cleaning issue, the tenant stated that the stain was minor and only became evident after they moved their furnishings. The tenant testified that they would have been willing to shampoo the carpet and even offered to do so, once the landlord made them aware of the condition, but the landlord declined their offer.

The tenant's position is that the landlord is not entitled to any compensation and that their security deposit should be returned in full.

## **Analysis**

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof was on the landlord, to 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 respondent.

In regard to the cleaning and repairs, I find that under section 32 of the Act a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Section 32 also states that a tenant of a rental unit must repair damage that is caused by the actions or neglect of the tenant, a tenant is not required to make repairs for reasonable wear and tear. In addition to the above, section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23(3) and 35 of the Act dealing with the requirement for the move-in and move-out inspections state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific

obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

I find that the tenant's role in causing damage can usually be established by comparing the condition before the tenancy began with the condition of the unit after the tenancy ended. In other words, through the submission of completed copies of the move-in and move-out condition inspection reports featuring both party's signatures.

In this instance I find that the Act was not followed by the landlord. I find that it is impossible to know what each party's opinion was with respect to the condition of every room and feature in the rental unit on the move-in day, because the document that would establish this fact was never completed by the landlord. In regard to the move-out inspection, I find that the landlord had made the inspection without the tenant's participation and did not comply with the mandatory process provided in the Act. Under the Act, it was incumbent upon the landlord to ensure that the tenants were given adequate opportunity to participate. The landlord also did not complete the move-out condition inspection report and provide a copy to the tenant as the Act requires.

With respect to the damage claimed for the bi-fold door, torn linoleum, damaged bathroom counter and nail holes in the walls, I find that the landlord has not sufficiently proven that the tenant was solely responsible for the need to repair or replace these items. I find it likely that they were subject to some normal wear and tear the extent of which is not possible to accurately determine due to the absence of move-in and move-out condition inspection reports. For this reason, I find that these claims must be dismissed.

With respect to the holes left where the tenant had placed wall hangings, I find that a modest number of pinholes may be considered to be normal wear and tear. I also accept the tenant's testimony that they would have been willing to restore the walls, had the landlord given them the opportunity to do so by arranging the move-out inspection in compliance with the Act. For the reasons above, I dismiss the landlord's claims for the painting and patching of walls.

With respect to the patching and painting of the walls, I accept that the tenant was permitted to paint and I find that the colour of the rooms painted by the tenant would not have caused the landlord to incur any expenditures if the rooms were left in these colours. I find that the unit was rented "as is" for three months to new occupants after the tenancy ended and the landlord only repainted the unit for subsequent tenants, who took occupancy after the unit had already been occupied to the second group of tenants for a three-month period.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate the pro-rated value of the replaced item, reference can be made to normal useful life of the item as provided in Residential Tenancy Policy Guideline 37. I find that the unit had not been painted by this landlord since it was purchased. I find that the average useful life of paint finish has been set at 4 years.

With respect to the carpet-cleaning, I find that under section 37 there is an expectation that the tenant shampoo the carpets before vacating in situations where the tenancy exceeded one-year. I find that on a balance of probabilities the carpets were likely in a reasonably clean condition at the start of the tenancy and were then left in a state that required cleaning at the end of the tenancy. While I acknowledge that the tenant would have been willing to do this task, given the chance, I find that this is a responsibility that should have been fulfilled regardless of the landlord's concerns about the mark. Accordingly, I find that the landlord is entitled to \$150.00 for the carpet cleaning costs.

### **Conclusion**

Based on the testimony and evidence I order that the landlord is entitled to retain \$150.00 from the tenant's \$400.00 security deposit, leaving a balance of \$250.00 as a credit in favour of the tenant. Accordingly, I hereby issue a monetary order to the tenant for \$250.00. this order must be served on the landlord and may be enforced through Small Claims Court if necessary.

The remainder of the landlord's application, including the cost of filing, is dismissed without leave.

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: September 28, 2011.

---

Residential Tenancy Branch