



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or Loss under the Act?

Background and Evidence

Both parties agree that this tenancy started on April 08 for a fixed term of one year. This term was extended twice more on April 01, 2009 and on April 01, 2010. The tenancy ended on September 30, 2011. Rent for this unit at the end of the tenancy was \$1,225.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$650.00 on February 28, 2008. The tenant gave the landlord his forwarding address in writing on September 26, 2011.

The landlord testifies that the move in condition inspection was conducted at the start of the tenancy with the tenant. At the end of the tenancy a move out inspection date and time was agreed upon by the parties however the landlord testifies that the tenant disagreed with the landlords findings as they walked around the unit, the tenant left the inspection, refused to sign the condition inspection report and refused to take a copy of the report which was left on the kitchen counter. The landlord testifies that he sent the tenant a copy of the inspection report with his evidence package for this hearing on October 13, 2011.

The landlord testifies that it was noted during the inspection that the tenant had not cleaned the walls and painted over dirt on the walls with touch up paint. This then discoloured the paint, the walls had to be washed and certain areas of discolouration had to be repainted. The landlord seeks to recover the sum of \$200.00 to wash the walls and the sum of \$750 to paint areas in the living room, dining room, foyer, laundry room and the second bedroom. The landlord states this work has not yet been completed but a quote has been provided. The landlord explains that the delay in completing this work was caused by some required plumbing work in the building which will result in mess in this unit.

The landlord testifies the tenant did not clean the rental unit to a reasonable standard. The landlord seeks to recover the sum of \$150.00 to clean the oven, the interior and exterior of the fridge, sweep and wash the tile and vinyl floor areas, clean two bathrooms, clean baseboards, wash kitchen counters and interior kitchen cupboards and remove a sticky substance on a bedroom door. The landlord states the tenants left a

child lock on the fridge which the landlords estimate will cost \$25.00 to remove. The landlord states this child lock is still in place in case any new tenants require it.

The landlord testifies he also found damage to the drywall and trim and seeks to recover the sum of \$150.00 for gouges out of the laundry room door jam and wall, damage to the baseboard, chips out of the corner of the wall, extensive wear and tear on the walls, damage to the baseboard in the den, damage to the drywall paper, and damage to a door jam in the second bedroom. The landlord testifies that this work has not yet been completed.

The landlord has provided a quote for all the work to the sum of \$1,690.00 plus HST the landlord states this quote includes some other work which the tenant is not being charged for. The landlord testifies he attempted to give the tenant a chance to come back to rectify the damage and cleaning but the tenant choose not to take this offer. The landlord also testifies that the unit was brand new at the start of the tenancy.

The landlord requests an Order to keep the tenants security deposit against these cleaning and repair costs and seeks to recover his \$50.00 filing fee from the tenant.

The tenant disputes the landlord's claims. The tenant testifies that during the move out inspection the landlord was antagonistic and belligerent towards the tenant so the tenant left the inspection. The tenant denies the landlord testimony that he was given a copy of the inspection report at the end of the tenancy and states he had left the inspection, so if the landlord had left the report on the kitchen counter the tenant did not receive it.

The tenant testifies that when he left the unit he had the carpets professionally cleaned and the unit was cleaned thoroughly throughout. The floors, showers, tubs, stove, fridge and behind the appliances he could pull out were all cleaned.

The tenant testifies that it was clear at the beginning of the inspection that the landlord had no intention of doing a thorough inspection as he was not writing anything down. The tenant testifies the landlord wanted the tenant to come back and do another inspection because the landlord wanted to get his camera but the tenant states this was the date and time for the inspection. The tenant testifies the landlord sent the tenant an e-mail on October 03 to arrange another inspection date the tenant declined as the inspection had already been done.

The tenant testifies that they removed pictures from the walls at the end of the tenancy and filled the holes. The tenant testifies they used the landlords own touch up paint on these areas and if it did not match it was not the tenants responsibility. The tenant states that he does not dispute that the unit requires painting he only disputes that it is his responsibility after a tenancy of three years with a family of four living in the unit the landlord should expect some wear and tear. The tenant testifies the landlord had inspected the unit annually and no comments were ever made about the wear and tear in the unit.

The tenant testifies that any gouges in the walls were not caused by the tenant's family and if they were he would have filled them when he did the walls. The tenant testifies that he and his family used the unit in a reasonable manner and he is not responsible for bring the unit to a higher standard after aging and natural forces have taken place.

The tenant seeks to recover double his security deposit as the landlord has extinguished his right to apply to keep the security deposit because he failed to provide a copy of the inspection report to the tenant in accordance with the *Act*.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find the move out condition inspection was scheduled for a particular day and time and at the beginning of this inspection both parties attended. The tenant then

disagreed with the landlords observations as to the condition of the unit and left the inspection before it was completed. The tenant should have continued with the inspection even if he did not agree with the landlords comments and although there is no section on the move out portion of the inspection report for the tenant to disagree with the landlords comments on the condition of the unit the tenant could have made note on the report that he did not agree.

The tenant argues that the landlord did not give him a copy of the inspection report however; I find the landlord did include a copy of this report in his evidence package which was sent to the tenant within 12 days of the end of the tenancy.

The Residential tenancy Policy Guidelines #17 state in part, that

The right of a tenant to the return of a security deposit is extinguished if the landlord has offered the tenant at least two opportunities for a condition inspection as required by the Act and the tenant has not participated on either occasion.

In this instance as the tenant has stated he did not fully participate in the arranged inspection therefore the landlord does not have to offer a second opportunity even though the landlord did send the tenant an e-mail on October 05, 2011 making an offer for a second inspection with the tenant. Consequently I find the tenant has extinguished his right to recover the security deposit and the landlord is entitled to make a claim against the security deposit for damages.

With regard to the damage to the rental unit I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant argues that he did clean the unit at the end of the tenancy and any other issues were simply normal wear and tear. The landlord argues that the damage and cleaning was excessive and went beyond normal wear and tear. The landlord has provided a copy of the move in and move out condition inspection report and photographic evidence to support his claim.

Having considered the landlord's documentary evidence and verbal testimony it is my decision that the landlord has meet the burden of proof, in part, concerning some damages and cleaning. The landlord has only provided one estimate for this work to be completed and I am not wholly satisfied that all the repair work is more than normal wear and tear. Consequently, I have limited the landlords claim for painting and repairs to the unit to the sum of \$500.00 and I have limited the landlords claim for cleaning to the sum of \$150.00.

As the landlord has been partially successful with his claim I find he is entitled to recover the \$50.00 filing fee from the tenant. A Monetary Order has been issued to the landlord for these costs less the security deposit and accrued interest as follows:

Repairs and painting	\$500.00
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Cleaning	\$150.00
Subtotal	\$650.00
Plus filing fee	\$50.00
Less security deposit and accrued interest	658.20
Total amount due to the landlord	\$41.80

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$41.80. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord is entitled to keep the security deposit and accrued interest of \$658.20 in partial satisfaction of his claim.

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: January 05, 2012.

Residential Tenancy Branch