



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for damage or loss under the Act.

Despite being served by registered mail sent on October 6, 2011, the respondent did not appear.

Issue(s) to be Decided

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 September 26, 2010 and ended on September 30, 2011. The rent was \$850.00 per month and the tenant paid a security deposit of \$425.00. A copy of the written tenancy agreement was in evidence. A copy of a move-out condition inspection report and copies of invoices were submitted into evidence.

The landlord was seeking to retain the security deposit and a monetary order for the cost of cleaning and painting in the amount of \$725.00.

The landlord testified that the tenant had signed the move out inspection report confirming that he agreed with the report including the need to clean and repaint. The form indicated that the tenant authorized the landlord to deduct the amounts owed from his \$425.00 security deposit.

The landlord testified that the cleaning costs were \$100.00 and the invoice indicated that this represented 4 hours of cleaning at \$25.00 per hour.

With respect to the painting, the landlord testified that the unit had been painted approximately 2 and a half years ago, but the tenant had patched holes made in the walls and this required touch-up painting at a cost of \$625.00.

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.

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.

In this instance I find that the Act was followed by the landlord and the report shows that some areas of the unit required cleaning at the end of the tenancy and the finishes in some areas were marred.

It appears that the tenant agreed with the notations on the report and consented to have the associated costs, which were not all known at the time, deducted from his \$425.00 security deposit.

Section 37 of the Act Section 37(2) of the Act also 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Given the above, I find that the landlord is entitled to the cleaning costs in the amount of \$100.00.

With respect to the cost of painting the unit, I find that 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 or finish based on its average useful life.

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 been painted by this landlord approximately 2 and a half years ago and that the average useful life of paint finish has been set at 4 years.

Accordingly, I find that the landlord is entitled to the pro-rated cost of the painting at 37.5% to account for the age of the finish. This amounts to compensation of \$234.38

Conclusion

Based on the testimony and evidence I order that the landlord is entitled to retain \$384.38 from the tenant's \$425.00 security deposit, comprised of \$100.00 for cleaning, \$234.38 for the tenant's share of the repainting and the \$50.00 cost of the application. This leaves a balance of \$40.62 as a credit in favour of the tenant. Accordingly, I hereby issue a monetary order to the tenant for \$40.62. 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 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: December 19, 2011.

Residential Tenancy Branch