



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on November 15, 2011. She also confirmed that she received a copy of the written evidence submitted by the landlord. I am satisfied that the landlord served these documents in accordance with the *Act*.

At the hearing, the tenant said that she had moved to the United States and only within the past week had received the remainder of her belongings. She said that she now had information that she would have liked to have entered into written evidence. She said that by the time that she received this material, she could not submit it into written evidence in time for consideration at this hearing. During the hearing, she noted that she had written three letters to the landlord after she ended her tenancy and vacated the rental unit by September 22, 2011. These letters were dated September 27, 2011, September 29, 2011 and October 19, 2011. The evidence she described pertained to her disagreement with the damage identified by the landlord, but did not relate to any ongoing issues she had with the painting of the rental unit while she was still a tenant. As the landlord entered into written evidence a copy of one of these letters, (i.e., her September 27, 2011), I was satisfied that I could proceed to hear the landlord's application for dispute resolution on the basis of the submissions entered into written evidence prior to this hearing and the oral testimony of the parties.

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

This six-month fixed term tenancy commenced on July 1, 2010. Monthly rent was set at \$715.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$367.50 security deposit paid on June 30, 2011.

The landlord entered into written evidence a copy of the signed June 26, 2010 joint move-in condition inspection report. The landlord did not complete the same form for the joint move-out condition inspection that the parties conducted on September 19, 2011. The landlord entered into written evidence copies of a "Move-Out Cleaning Checklist" dated September 19, 2011 in which a number of items were identified as requiring repair or cleaning. The landlord provided a copy of the Security Deposit Statement entered into the bottom of the condition inspection report. This statement identified \$392.00 for painting and \$45.00 for window cover cleaning as owing at the end of this tenancy. The landlord noted on this Statement that the tenant had refused to sign this Statement, a point confirmed by the tenant at the hearing.

The landlord also submitted a copy of four photocopied photographs apparently created by the tenant, which were totally grey and revealed nothing. The landlord also submitted a copy of the tenant's September 27, 2011 letter to the landlord in which the tenant objected to paying for all of the painting the landlord intended to conduct to this rental suite after the expiration of this tenancy.

The landlord's application for a monetary award of \$437.00 included a claim for \$392.60 for painting and \$45.00 to clean the drapes in the rental unit. The landlord also entered into evidence copies of receipts for painting and to clean the drapes. At the hearing, both parties agreed that the landlord painted the rental unit before the tenant occupied the rental suite. The landlord confirmed that the \$392.00 bill for painting covered the landlord's cost for repainting this entire rental unit.

The tenant admitted that she had damaged one of the walls with her bicycle during this tenancy. She testified that one of the landlord's representatives told her that it would cost \$35.00 to conduct the minor repair and repainting of this portion of wall. The tenant said that some of the painting required arose as a result of a poor original paint job to the ceiling of her bathroom. She testified that she had a professional painter examine

her bathroom who told her that it was likely that the landlord had just painted over existing paint chips and damage without properly preparing the surface of the bathroom ceiling. She testified that she spoke with the landlord's representatives about the peeling paint in her bathroom and other concerns about the paint job in her rental unit prior to the end of her tenancy, but did not send any letters about this matter until after her tenancy ended.

The landlord testified that he believed that the repainting was necessary as a result of the tenant's inadequate cleaning of some of the walls,

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. Once that has been established, 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.

Although the landlord entered into evidence a copy of an October 1, 2011 receipt for cleaning and re-hanging of the drapes in this rental unit, his own "Move-Out Cleaning Checklist" prepared on September 19, 2011 noted that no cleaning was required nor was any cleaning required for the drapes. At the hearing, he said that this cleaning only became apparent after the new tenant commenced her tenancy and advised the landlord that the drapes had not been cleaned. He said that he only checked the drapes as being in satisfactory condition in his Checklist because the tenant told him that they were. The tenant testified that she did clean the drapes before she ended her tenancy. I dismiss the landlord's application for a monetary award to clean and re-hang the drapes without leave to reapply because the landlord's own cleaning checklist of the September 19, 2011 joint move-out inspection noted that the drapes were satisfactory.

Based on the evidence before me, I find that the tenant did not dispute that some damage arose during her tenancy for which she was responsible and for which the landlord would have incurred repair and repainting costs. I also find that the tenant's failure to send any written concerns to the landlord about the quality of the repainting done by the landlord until after she moved out, calls into question the credibility of her

assertions made after she ended her tenancy about the landlord's responsibility for the problems that required this rental unit to be repainted after she ended her tenancy. However, I also note that the landlord did not submit very convincing evidence, either written or photographic to support the landlord's claim that the landlord is entitled to reimbursement for the entire cost of repainting this rental unit from the tenant. I also take into consideration that Residential Tenancy Policy Guideline 37 provides guidance that the useful life of an interior paint job for a residential tenancy is expected to be four years. This tenancy lasted 1 1/3 years, approximately one-third of the four year useful life for the interior paint job conducted shortly before this tenancy began.

I am satisfied that the landlord has proven eligibility to some recovery of the repainting costs incurred by the landlord at the end of this tenancy. I am also satisfied that \$392.60 in repainting costs were incurred by the landlord. However, my assessment of the extent to which the tenant should be held responsible for these costs is influenced by the weakness of the evidence supplied by both parties to support their respective positions. The absence of useful photographs, a readily comparable set of move-in and move-out condition inspection reports, or a documented written record of concerns allegedly raised by the tenant about the repainting of this suite renders it difficult to identify an amount for this monetary award.

Based on a balance of probabilities and for the reasons outlined above, I find that the tenant is responsible for \$200.00 of the landlord's repair and repainting costs, an amount which includes the damage caused by the tenant's bicycle to one of the walls. I issue a monetary award in the landlord's favour in the amount of \$200.00.

Since the landlord has been partially successful in this application, I allow the landlord to recover \$25.00 of the landlord's filing fee from the tenant.

In order to give effect to the above monetary awards, I allow the landlord to retain \$225.00 from the tenant's security deposit. I order the landlord to return the remainder of the tenant's security deposit plus applicable interest. No interest is applicable over this period.

Conclusion

I order the landlord to return \$142.50 from the retained portion of the tenant's security deposit to the tenant forthwith. In case that does not occur, I issue a monetary Order in the tenant's favour in the following terms which allows the landlord to retain an amount for damage arising out of this tenancy and to recover one-half of the landlord's filing fee from the tenant:

Item	Amount
Repainting & Repairs	\$200.00
Less Security Deposit	-367.50
Recovery of ½ Filing Fee for this application	25.00
Total Monetary Order	(\$142.50)

I dismiss the remainder of the landlord's claim for damage without leave to reapply.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.

Dated: February 10, 2012

Residential Tenancy Branch