

## **Decision**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for replacement of the carpet valued at \$1,914.99, repair and painting of damaged walls costing \$540.00, cleaning and garbage removal at a cost of \$250.00 for labour and \$50.00 for materials and the \$150.00 cost of changing locks. The landlord was seeking to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

### **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 landlord testified that the tenancy began on November 1, 2010 with rent of \$1,625.00 per month and a security deposit of \$812.50 was paid. The landlord testified that the tenancy ended on March 1, 2012 and the tenant moved out without providing a forwarding address and without participating in the move-out inspection, which was done in the tenant's absence.

The landlord testified that, when the tenant left, the carpet was seriously damaged and had to be replaced. The landlord testified that the carpet was new as of August 2010. The landlord stated that the damaged floors were renovated by installing wood flooring throughout. However the landlord submitted into evidence estimates for what it would have cost to remove and replace all of the carpet and under pad in the living room, hall and bedroom. The landlord is claiming \$1,914.99.

The tenant acknowledged that there was bleach damage in an area approximately 4 feet by 6 feet on the living room carpet, but disputed the landlord's position that all of the under pad and carpeting in the entire unit required replacement. The tenant testified that she had accepted that her security deposit of \$812.50 could be retained for the damage to the portion of the floor in question.

The landlord testified that, after the tenant left, the walls were found to be damaged, particularly in one area where it appeared that glue had been applied to the wall surface. The landlord referenced notations shown on the move-out condition inspection report and an itemized calculation of \$540.00 for an area of 4 feet by 4 feet representing \$90.00 for materials and \$450.00 for labour to clean and dispose of discarded items

The tenants testified that she had received a professional estimate of \$175.00 for the work in question and does not agree that the cost would exceed this amount. A copy of this estimate was in evidence.

The landlord testified that the tenant had left 2 bags of garbage and some furnishings including a chair and cabinet. The landlord testified that the unit required cleaning as well and the owner had spent a total of 10 hours labour valued at \$250.00 and \$50.00 in materials.

The tenant disputed the landlord's claim and referenced a copy of a billing statement in evidence verifying that the tenant had hired and paid her own professional cleaners to clean the unit at a cost of \$360.00. The tenant did acknowledge that it was possible that a few items may have been left on site, such as a chair and small cabinet on casters that would require minimal time and effort to remove. The tenant did not agree with the landlord's claimed costs.

The landlord testified that costs of \$150.00 were incurred to change the locks after the tenant left.

### **Analysis**

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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

In this instance, the burden of proof is on the claimant, that being 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.

With respect to the value of the carpet that was seriously marred in the living room area by spilled bleach, I find that the claim falters with respect to element 3 and 4 of the test for damages. Under section 7(2) of the Act, a landlord is expected to mitigate losses by finding a reasonable economic means to rectify damage. In this case I find that the landlord replaced the flooring in the unit and wanted to be compensated for complete re-carpeting when only one room was seriously damaged. Therefore, I find that the landlord is not entitled to be compensated for the cost of the under pad nor for the cost/value of re-carpeting of any area other than the living room. Accordingly, I find that the landlord is entitled to be compensated \$585.00 for the damage.

With respect to the damage to the walls, I find that based on the evidence and testimony, significant damage was restricted to one wall. I find that the monetary amounts claimed by the landlord for the materials and labour were not supported and appeared to be inflated, given the fact that the glued portion only affected an area that was four feet by four feet and it is not clear what measures were taken to remove the glue as opposed to replacing the drywall. I find that the landlord is entitled to be compensated in the amount of \$175.00.

In regard to the landlord's claim for cleaning costs, 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. I accept the tenant's evidence that she had paid to have the unit professionally cleaned and that this resulted in it being left in a reasonably clean state.

With respect to the garbage left, I accept that there were two bags left on site and a few other items to be disposed of. However, the landlord did not supply invoices from the landfill and did not separate the costs of disposal from the claimed costs for cleaning. For this reason I find that the landlord has not sufficiently proven the amount of the claim relating to garbage removal.

With respect to the cost of changing the locks, I find that section 25 of the Act places the responsibility for the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
- (b) pay all costs associated with the changes under paragraph (a).

Section 25 (2) of the Act states that, if the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Accordingly, I find that the landlord is not entitled to be reimbursed for the cost of changing the locks.

Based on the evidence I find that the landlord is entitled to be compensated \$810.00 comprised of \$585.00 for the value of the carpet damage, \$175.00 for the wall repair and the \$50.00 fee for this application.

### **Conclusion**

Having found that the landlord is entitled to be reimbursed \$810.00 in damages and the filing fee, I hereby order the landlord to retain this amount from the \$812.50 security deposit being held in trust for the tenant, in full satisfaction of the landlord's claim.

This would leave \$2.50 still outstanding in favour of the tenant. Given the small amount, I trust that the landlord will refund it to the tenant without a monetary order having to be issued and served.

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: May 22, 2012.

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Residential Tenancy Branch