



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from June 1, 2008 to May 31, 2009. The parties agree that, thereafter, tenancy continued on a month-to-month basis. Monthly rent at the outset of tenancy was \$1,800.00, and was due and payable on the first day of each month. On or about February 1, 2009, rent was reduced to \$1,400.00 per month. A security deposit of \$900.00 was collected near the start of tenancy, and a move-in condition inspection report was completed with the participation of both parties.

Following provision of notice to end the tenancy, the tenant vacated the unit on or about February 29, 2012. A move-out condition inspection report was completed with the participation of both parties on February 29, 2012. The tenant provided his forwarding address on the move-out condition inspection report and the landlord filed his application for dispute resolution on March 14, 2012, which is within 15 days following the end of the tenancy. New tenants began to move into the unit later in the day on February 29, 2012.

During the hearing the landlord's agent withdrew the aspect of the application concerning a claim for compensation in the amount of \$392.00, which concerns repairs to flooring in the unit. The landlord's agent indicated that this matter may be addressed

in a subsequent application. For the present time no floor repairs have been undertaken and, accordingly, no related costs have been incurred.

Analysis

Based on the documentary evidence and testimony of the parties, the various remaining aspects of the landlord's application and my findings around each are set out below.

\$354.89: *cleaning in the unit*. The tenant testified that he paid \$120.00 in cash to a person who undertook to clean the unit at the end of tenancy. The person who did this cleaning was present at the hearing ("SS"); she testified that she was unable to complete cleaning of the oven and certain areas within the bathroom, in part, because new tenants had begun to move into the unit. The landlord testified that the new renters were concerned that the unit had not been sufficiently cleaned when they took possession, and this led to the landlord's claim for costs arising from hiring another cleaner.

In view of the tenant's acknowledgment through his witness that, while some cleaning had been commenced, cleaning had not been entirely completed, I find that the landlord has established entitlement limited to \$117.44*. This calculation effectively represents an equal sharing by the parties of the total cost of cleaning, and is calculated as follows:

\$354.89: landlord's cost
\$120.00: tenant's cost
\$474.89: total cost (\$354.89 + \$120.00)
\$237.45: ½ the total cost (\$474.89 ÷ 2)

\$354.89 (landlord's cost) - \$237.45 (½ the total cost) = \$117.44.

The attention of the parties is drawn to section 37 of the Act which speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

\$336.00: patching and painting. The landlord testified that this work was undertaken on or about May 3, 2012 and that related costs actually totalled \$350.00. There is no receipt for this cost submitted in evidence.

The parties agree that the unit was in brand new condition at the time when the tenant took possession in June 2008, and that no painting took place in the unit during the term of tenancy. In the result there was more than 3 ½ years worth of wear and tear on the unit by the time tenancy ended. Residential Tenancy Policy Guideline # 37 speaks to the "Useful Life of Work Done or Thing Purchased," and provides that the useful life of interior paint is 4 years. The move-out condition inspection report includes various notations related to the condition of "walls and trim" which include, but are not necessarily limited to, "a little dirty, few marks, gouge" / "few marks, nothing major" / and "marked up."

In the absence of a receipt, or pictures showing the nature of patching and repairs required, and in view of the wear and tear that would be expected during a tenancy of this duration, I find that there is insufficient evidence to support this aspect of the landlord's claim. Accordingly, it is hereby dismissed.

\$50.00: filing fee. As the landlord has withdrawn one aspect of the original application and achieved limited success with the balance of the application, I find that the landlord has established entitlement limited to recovery of \$25.00*, which is half the filing fee.

Following from the above, I find that the landlord has established a claim of \$142.44* (\$117.44 + \$25.00). I order that the landlord retain this amount from the tenant's security deposit, and I order the landlord to reimburse the tenant in the amount of the balance of \$757.56 (\$900.00 - \$142.44), in addition to interest accrued on the original security deposit in the amount of \$7.89. Pursuant to section 67 of the Act I hereby issue a monetary order in favour of the tenant for \$765.45 (\$757.56 + \$7.89).

Conclusion

I hereby order that the landlord retain \$142.44 from the tenant's security deposit.

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$765.45. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order 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: May 18, 2012.

Residential Tenancy Branch