



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Preliminary Issues

At the outset of the hearing the Tenant requested that her daughter act as her Agent for this proceeding because she felt her English was not strong enough to present her position. The Tenant's Agent confirmed that she would present the evidence on behalf of her mother and would consult her mother if required.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: 25 photographs which were taken September 30, 2012; invoices for required repairs; the tenancy agreement; the move in condition inspection report form; and the move out inspection report form.

The Tenant submitted documentary evidence which included, among other things, copies of: their written statement; a crayon box; instructions printed from the internet on how to remove crayon; the tenancy agreement; and the move out inspection report form.

The following facts were not in dispute:

- The rental unit had been completely renovated inside and out just prior to this tenancy which included new windows, flooring, kitchen and bathroom cabinets and counters; lighting; electrical behind the walls; plumbing fixtures, and new paint throughout; and
- The Tenant and her family were the first to occupy the unit since completion of the renovations; and
- The Tenant and her family occupied the unit since November 25, 2010 under four consecutive fixed term tenancy agreements; and
- The Tenant paid \$570.00 on November 2, 2010 as the security deposit which was transferred to each subsequent tenancy agreement; and
- The latest fixed term was from June 1, 2012 to August 31, 2012 and required \$1,160.00 per month for rent; and
- The Tenant provided proper notice to end the tenancy effective September 30, 2012; and
- The parties attended a move in inspection and signed the condition inspection report form on November 25, 2010; and
- The parties attended the move out inspection however the Tenant refused to sign the condition inspection report form; and
- The Tenant's son drew on the walls in every room except for the master bedroom and the second bedroom; and
- The bathroom vanity cabinet was scratched during the tenancy; and
- The laminate flooring was damaged during the tenancy.

The Landlord affirmed that the photographs provided in his evidence were taken September 30, 2012 and they display the damages which he is claiming compensation

for. He advised that they hired a contractor to conduct the repairs which involved the following: painting the walls which had crayon, paint, and pen drawings on them; stretching and re-piping the screen in to the screen door frame for the patio which had been pushed out; painting the bathroom vanity cabinet; and replacing the damaged sections of the laminate flooring.

The Tenant's Agent argued that they were of the opinion that it was okay for the Tenant's five year old son to draw on the walls because the crayon was washable. She pointed out how some of the items being claimed were not listed on the move out inspection report form; however she did not deny the existence of the damages only that they were not written on the report.

The Agent attempted to argue that items were added to the move out inspection report form after it was initially completed. After I pointed to the Tenant's evidence which included a copy of the report, which clearly listed the items she argued were added afterwards, she continued to argue that not all of the items were listed. When I asked the Agent why they did not clean the walls and repair the damage prior to vacating the unit she stated that her mother had heard the Landlord offered to paint the unit for the new tenant therefore she felt she would not have to wash the walls. She was willing to pay for the cost to wash the walls because only washable crayons were used; but they did not agree to pay to paint them.

Analysis

Upon consideration of the evidence before me I accept that the photographic evidence displays the condition of the rental unit on September 30, 2012.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides 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.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy, As a result, the Landlord suffered a loss when having to have the damage repaired.

Notwithstanding the Agent's argument that they occupied the rental unit for two years and they were of the opinion that the damages were an acceptable amount, I find the Landlord has met the burden of proof and I award them damages as supported by the invoices provided in their evidence as follows: Painting and screen door repairs \$772.80 plus bathroom cabinet painting and floor repair of \$336.00 for a total amount of **\$1,108.80.**

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Repairs	\$1,108.80
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,158.80
LESS: Security Deposit \$570.00 + Interest 0.00	-570.00
Smart card deposit of \$10.00	<u>- 10.00</u>
Offset amount due to the Landlord	<u>\$ 578.80</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$578.80**. This Order is legally binding and must be served upon the Tenant.

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 04, 2013.

Residential Tenancy Branch