



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR MNSD, FF

Introduction

This was a hearing with respect to the landlord's claim for a monetary order and an order to retain the tenant's security deposit. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and necessary cleaning, repairs and painting?

Background and Evidence

The rental unit is an apartment in a duplex in Vernon. The tenancy began on August 15, 2008. Monthly rent was \$1,100.00 per month. The tenant paid a \$550.00 security deposit and a \$300.00 pet deposit at the beginning of the tenancy. There was no condition inspection performed when the tenant moved in. The tenancy agreement provided that smoking was not allowed in the rental unit.

The tenant moved out December 15, 2012. The landlord claimed that the rental unit smelled of smoke and he repainted it at a cost of \$2,300.00 to get rid of the odour. He said there was a piece of laminate flooring that was missing that had loosened and slid underneath a counter in the kitchen of the rental unit. The total bill for painting and floor repair was \$2,576.00. The landlord submitted a handwritten invoice for the said amount. The invoice was dated February 10, 2013. The landlord said that the work was performed by his son, who is a painting contractor. In the landlord's application filed December 19, 2012 he claimed payment of the sum of \$850.00 for: "Damage to flooring & cigarette smoke to residence. city utilities". He did not provide evidence to support a claim for unpaid utilities. The landlord provided a statement from a neighbour who said that she walked into the next-door residence and it had a strong odour of cigarette smoke. He said that the tenant should be responsible for a portion of the re-

painting costs because she smoked in the rental unit, contrary to the tenancy agreement and because the unit smelled of smoke. He acknowledged that the laminate flooring problem was not the tenant's responsibility. The landlord said that the paint was four years old when the tenancy started and he acknowledged that there were two small areas in the rental unit with incomplete paint.

The tenant testified that when she moved from Calgary to occupy the rental unit the section of laminate flooring was missing. She provided a written statement from the people who helped her to move; they stated that the section of flooring was missing and they purchased an area rug to cover the missing laminate because it was an eyesore and a tripping hazard. They also said in their statement that there were pre-existing paint defects when the tenant moved into the rental unit; there were several areas that were covered only in primer. These were below the window in the dining area and above the laundry door. The tenant said that she mentioned the flooring problem early in the tenancy, but the landlord did not inspect it or fix it.

The tenant submitted a letter from a friend who helped her move out. The friend said that the rental unit was cleaned and the carpets shampooed. She said there was no cigarette smell in the apartment.

The tenant acknowledged that she had smoked in the rental unit, but she said she was a very occasional smoker and there was no odour of smoke when she moved out.

During the hearing the parties were given an opportunity to discuss a settlement of the landlord's claim, but they were unable to arrive at a mutually agreeable compromise.

Analysis

The fact that the tenant may have smoked in the rental unit contrary to the tenancy agreement does not automatically entitle the landlord to a monetary award. The landlord must prove that he suffered damages as a result of the breach and that the tenant's use of the rental unit caused damage that exceeded normal wear and tear.

The Residential Tenancy Policy Guideline 40 provides guidance with respect to the useful life of building elements; the guideline provides that:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. Useful

life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

According to the Policy Guideline, interior paint is considered to have a useful life of four years. On the evidence presented the interior paint in the rental unit was more than eight years old when the tenancy ended and the evidence established that there were some existing paint deficiencies when the tenancy started.

The evidence as to smoke odour in the rental unit was equivocal; the landlord's witness statement noted the smell of smoke and the tenant's witness denied it. I accept that there may have been some lingering smoke odour in the rental unit when the tenant moved out, but I do not find that the odour entitled the landlord to be compensated for the cost of painting the rental unit because the paint was more than eight years old and irrespective of the tenant's smoking it would have needed to be re-painted due to normal wear and tear. I find that the tenant is not liable for any portion of the landlord's painting costs; she is not responsible for the problem with the laminate floor and the landlord's claim for a monetary award is therefore dismissed without leave to reapply.

Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in satisfaction of his monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security and pet deposits with interest; I so order and I grant the tenant a monetary order in the amount of \$855.12. This order may be registered 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: March 18, 2013

Residential Tenancy Branch

