



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order to recover the cost of painting and for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant provided into evidence a copy of a tenancy agreement signed by the parties on January 28, 2009 for a 1 year fixed term tenancy beginning on March 1, 2009 that converted to a month to month tenancy on March 1, 2010 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 paid.

The parties agree the tenant painted the rental unit during his tenancy. The landlord provided photographic evidence showing parts of the unit were painted black and parts were painted red.

The tenant submits that he had asked the landlord at the start of the tenancy if he could paint and they denied him, however he states the landlord's partner called him two days later and said he could paint. He also states that no restrictions were discussed and nothing was in writing.

The landlord testified that her partner did discuss with the tenant an approval to paint the laundry room only and on the condition that if the tenant was not going to paint it the original colour that it would be painted back to the original colour by the end of the tenancy.

The parties agreed they conducted their move out condition inspection on March 4, 2013. The tenant submits that he contacted the landlord on March 31, 2013 wanted to complete the inspection at that time but it did not work for the landlord and they agreed on March 4, 2013.

The landlord seeks compensation in the amount of \$480.00 for painting and \$700.00 or the equivalent of ½ month's rent that landlord lost because they had to complete the painting prior to their new tenant's move in.

The landlord submitted into evidence a quote, dated March 7, 2013, for work to be completed on the rental unit in the amount of \$800.00 but states that they had additional work completed and did not want to charge the tenant for that work.

The tenant testified that he provided the landlord with his forwarding address by courier and that it was delivered to the landlord on April 4, 2013. The landlord did not dispute receiving the tenant's forwarding address on April 4, 2013.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

From the testimony of both parties I accept the landlord had given the tenant permission to paint the rental unit near the start of the tenancy. While there is no written agreement with regard to any requirements regarding the painting I find it unlikely the landlord would have agreed to such bold colours to remain in the unit after the tenancy ended. Therefore, based on the balance of probabilities I find that the landlord would have directed the tenant to return the colours to more neutral colours when they agreed to allow the tenant to paint.

As such, I find the landlord is entitled to compensation for the painting of the portions of the unit the tenant had painted black and red. Based on the quote submitted by the landlord I accept that the landlord has established the value of this work to be \$480.00.

As to the landlord's claim for ½ month's lost revenue because of the requirement to complete the painting, I find the landlord failed to take reasonable steps to mitigate this loss. As the landlord was the one who was not available to complete the move out inspection on the final day I find the landlord contributed to the delay in getting the painting completed.

In addition, as the landlord was aware the tenant had completed the painting near the start of the tenancy in 2009 the landlord could have taken the opportunity over the course of the 4 years of the tenancy to inspect the rental unit as allowed by the *Act* to determine if the tenant needed to repaint by the end of the tenancy. As such, I dismiss this portion of the landlord's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the tenant's undisputed testimony that his forwarded address was delivered to the landlord on April 4, 2013 I find that in order to be compliant with Section 38 (1) the landlord had until April 19, 2013 to file her Application to retain the security deposit. As

the landlord submitted her Application on April 22, 2013 I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of the deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$920.00** comprised of \$1,400.00 for double the security deposit less the \$480.00 painting costs the landlord is entitled to.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were at least partially successful and therefore eligible to recover the filing fee but both have paid the same amount for filing fees I find no reason to award the amounts to the parties.

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: July 19, 2013

Residential Tenancy Branch