



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the Tenant resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2010 after the parties entered into a one year fixed term tenancy agreement in writing that provided that would become month to month

after the fixed term unless that if he tenant gave written notice he was ending the tenancy. The rent was \$4500 per month payable on the first day of each month. The tenant paid a security deposit of \$2250 at the start of the tenancy. The rent was subsequently increased to \$4650 per month.

The landlord testified the original tenancy agreement provided that there were five people only occupying the rental unit (two parents, two children and nanny). As it turned out there were 9 people occupying the rental unit including two parents, a nanny and 6 children. The tenant testified that he was in a domestic dispute when he signed the original tenancy agreement it was uncertain who would have custody of his children. He testified the landlord did not object to the presence of the additional children when he conducted an inspection after the additional children moved in.

On March 19, 2013 the tenant gave the landlord notice in writing that he was terminating the tenancy at the end of April. The tenant vacated the rental unit at the end of April.

The landlord claimed the sum of \$173.25 for the cost of cleaning and \$4819.50 for the cost of painting walls, baseboards, repairing entrance door and re-installing post case plus materials. The tenant disputes these claims. The tenant testified they hired professional cleaners after they vacated the rental unit. They testified that the alleged damage is no more that reasonable wear and tear.

The landlord testified the rental unit was new in 2009. They had a couple living in the rental unit for the first year. The tenants moved into the rental unit in September 2010. The landlord proposed to re-paint the rental unit at that time but the tenant refused. In 2012 the landlord considered putting the rental unit on the market and they hired a flooring company to make certain repairs. The Invoice for the flooring company dated July 30, 2012 charged the landlord \$130 for wall paint and \$600 for the following "patch & sand & painting all walls for downstairs and theater room"

The tenant testified this was a poor quality paint job. As an example he testified they painted around the shelves and furniture.

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord failed to prove the tenant is responsible for the cleaning charge levied by the landlord. The person who did the cleaning did not attend or testify at the hearing. The invoice produced does not outline the work done, the length of time it took her/him and the hourly rate. The tenant denies he failed to sufficiently clean the rental unit. He testified that professional cleaners were hired and they cleaned the rental unit after he vacated. I determined the evidence produced by the landlord is insufficient to establish that the tenant left the rental unit in a condition less than what is required by the Residential Tenancy Act.
- b. The landlord claimed \$4819.50 for the cost of painting. The contractor who did the work did not testify. The Invoice charges \$2700 for painting walls, \$840 for painting baseboards, \$350 for re-installing the post case,

painting the damaged door frame and \$700 for material. The landlord failed to provide particulars as to the material charge.

Policy Guideline #40 provides that the average life of an interior paint job is 4 years. The rental unit was new in 2009. A couple lived in the rental unit for approximately one year prior to the tenant taking possession. The rental unit was not painted when the tenant took possession. The parties agree that the landlord hired a painting company to paint the rental unit in July 2012. That company charged the landlord \$730 for painting (including paint).

The landlord is basing the claim on an invoice charging \$2700 for painting, \$840 for painting baseboard, \$350 for re-installing the post case and painting the damaged door frame and \$700 for materials.. After considering the disputed evidence of the parties including the oral testimony of the parties, documents produced at the hearing and photographs provided by the landlord I determined the landlord is entitled to \$750 of this claim. I am satisfied based on the evidence presented that there was some damage that exceeded reasonable wear and tear. However, I determine the paint job was at the end of its normal life. I determined the paint job completed in July of 2012 was not sufficient. The painters painted around the furniture and the landlord would need to re-paint those walls. There is no evidence the baseboards were painted in the July 2012 job and the paint job of the baseboards was at the end of its useful life. The invoice produced by the landlord alleges \$700 for material. This is insufficient to determine whether the tenant is responsible for this amount. While I am satisfied the tenants caused some damaged that exceeded reasonable wear and tear I determined a fair assessment of the tenant's responsibility is \$750.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$750 plus the \$50 filing fee (reduced to reflect the limited success of the landlord) for a total of \$800.

Security Deposit

I determined the security deposit plus interest totals the sum of \$2250. I ordered that the landlord shall retain the sum of \$800 from the security deposit. I further ordered that the Landlord pay to the Tenant the remainder of the security deposit in the sum of \$1450.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 22, 2013

Residential Tenancy Branch

