



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Holywell Properties Agent
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. During the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit site or property?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agree that this tenancy started on August 22, 2011. Rent for this unit was \$1,200.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 in August and October, 2011. Both parties attended a move in and move out condition inspection of the property and the tenant provided a forwarding address in writing to the landlords on October 18, 2013.

The landlord testifies that it was determined during the move out inspection that the tenant had repaired some damage to the walls in the unit and painted these repairs. However the paint need not match the existing colour. The landlord also determined some damage to a door trim from the tenant's cat. The tenant agreed that she was responsible for these items. The landlords testify that later the landlord discovered that the walls in the unit were covered in a soot like coating. There appeared to be some swish marks that looked like an attempt to clean the walls. However the landlord had to wash every wall in the unit. One bedroom was partially marked with this black soot in the shape of a cross. The landlord also found some wax splatters on a wall. The landlord testifies that upon entering the unit there was a musty, smoky smell. The landlord testifies that as there is not a fireplace in the unit they can only think the tenant burnt incense or candles in the unit that caused this soot on the walls.

The landlords testify that they obtained a quote to repair and paint the mismatched walls only for \$650.00, to repair the damaged trim for \$70.00 and to wash the walls, blinds, windows and light fixtures for \$340.00. The landlord testifies that the tenant's repair in the bathroom wall had cracked so that wall had to be repaired. The landlords did this work themselves and seek to recover \$650.00 for painting, \$70.00 for trim repair and \$340.00 to wash the walls and windows. The landlords have provided receipts for paint and supplies in evidence and photographic evidence of the condition of the walls. The landlords testify that the unit had been freshly painted about five weeks before the tenant moved into the unit in August, 2011.

The landlords testify that the amount of \$1,110.00 was retained from the tenant's security and pet deposit. This sum also included \$50.00 for the filing fee for this application. The balance of \$90.00 was returned to the tenant on October 13, 2013. The landlords seek an Order permitting them to retain this amount from the security and pet deposits.

The tenant testifies that she had agreed she was responsible for damage to the door trim and patched walls but they did not agree on an amount to be deducted from the security or pet deposit. The tenant testifies that she did try to match the wall paint and took a chip of this into the paint store to be matched. However, when it went on the walls it was a different shade. The tenant testifies that the landlords did not inform the tenant so she could have gone back to the paint store and got the colour changed.

The tenant disputes that she is responsible for any soot on the walls. The tenant testifies that she did not use candles or incense and the stud marks were showing through the walls as black lines which the tenant had notified the landlord of. The tenant testifies that the previous occupants smoked as the tenant had to wash nicotine stains from the interior doors at the start of the tenancy. The tenant submits that this nicotine could still be bleeding through the paint on the walls. The tenant testifies that her cleaner did wash off all finger prints on the walls for which the tenant agrees she was responsible for.

The landlord cross examines the tenant and asks if the tenants father did any taping on the wall repairs. The tenant responds that no, he did not, but he did put a foam product in the hole in the bathroom wall as it was a hollow wall. The tenant agrees that this repair had cracked. The landlord asks the tenant what the tenant thought caused the heavy black mark on the bedroom wall. The tenant responds that it could have been nicotine bleeding through the wall. The landlord asks the tenant what caused the blue and red wax flecking on the walls. The tenant responds that she does not know and didn't see any wax on the walls.

The landlord testifies that the black on the walls was on the surface of the walls and was not seeping through the paint as shown in the landlords' photographs of them cleaning the walls. The landlord testifies that the tenant had requested a fan in the bathroom as the special needs person living there liked to take excessively long showers. The landlord agrees that the exterior walls did show some lines from the studs. This is due to the wall being colder and any moisture or colder air outside will attract dust to the stud lines. The landlord testifies that this has nothing to do with the soot on every other wall in the house.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I am satisfied with the evidence and testimony before me that the landlord has met the burden of proof that this unit was freshly painted at the start of the tenancy. I am also satisfied that the tenant did patch some holes; however, one of these required more work and the patched walls had to be repainted again by the landlord. I am also satisfied that the landlord has met the burden of proof concerning the costs claimed for this work. Furthermore, in consideration of the landlords claim for cleaning the walls; neither party is able to determine the cause of the soot conclusively; however, it is clearly on the walls. I am not here to determine what caused this but rather to determine if the tenant should have cleaned the walls to a reasonable standard and whether or not this blacking of the walls occurred during the tenancy. I find as the unit was freshly painted two years prior to the end of the tenancy and therefore can only conclude that this soot like substance occurred during the tenancy. I find the landlord has met the burden of proof that this was something that laid on the surface of the walls and was not seeping through the walls as stated by the tenant. Consequently, it is my decision that the tenant was responsible for cleaning the walls in the unit and therefore I uphold the landlords application..

I find in favour of the landlords claim for a Monetary Order for damages to the unit of **\$1,060.00**. As the landlord has already deducted this amount from the security and pet deposit no Monetary Order is required.

As the landlord has been successful I also find the landlord may recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. As the landlord has already retained this amount from the security deposit no further Monetary Order is required.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. I Order that the landlords retain the amount of **\$1,110.00** from the security and pet deposit pursuant to s. 38(4)(b) of the *Act*.

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: February 07, 2014

Residential Tenancy Branch

