



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 10, 2014. Both parties also confirmed that they had received one another's written and photographic evidence packages. They also confirmed that they had reviewed one another's evidence packages in advance of this hearing. I am satisfied that the above documents were served to one another and that both parties were given sufficient notice of one another's evidence in order to present their positions during this hearing.

Issues(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested in her claim that the rental unit was damaged during this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings are set out below.

The landlord entered into written evidence a copy of the initial fixed term Residential Tenancy Agreement (the Agreement) signed by both parties on November 14, 2011 for this tenancy scheduled to begin on December 1, 2011. Monthly rent was set at \$575.00, payable in advance on the last day of each month, plus \$60.00 for monthly utilities. The landlord continues to hold the tenant's \$287.50 security deposit paid on November 14, 2011. The parties agreed that they signed a series of extensions to the original Agreement, the last of which was to cover the period from January 13, 2014 until February 28, 2015.

The tenant testified that he vacated the rental unit prior to March 26, 2014, but sent the landlord notice by email that he had moved out effective March 25, 2014. The landlord entered into written evidence a copy of an undated but signed document from the tenant in which the tenant stated that he would be vacating the rental premises on or before March 31, 2014.

The parties in attendance at the hearing agreed that they participated in a joint move-in condition inspection on November 25, 2011. The landlord's agent (the agent), who has been acting in that capacity during this tenancy for his mother, the landlord, submitted a copy of the joint move-in condition inspection report, signed by him and the tenant. The agent stated that he did not undertake a joint move-out condition inspection with the tenant as the tenant had already abandoned the rental unit by the time the tenant notified the landlord, the agent's mother, that the tenant had already vacated the rental unit. Although the agent entered into written evidence a copy of his own move-out condition inspection report, he signed this report as both the landlord and the tenant.

The agent testified that he was successful in locating a new tenant for this rental unit who took possession of the rental unit on or about April 2, 2014, at no rental loss to the landlord. The only claim made by the landlord against the tenant was for the recovery of \$294.00 in carpeting that the landlord purchased on March 28, 2014 to replace carpet that the landlord and her agent maintained were damaged during the course of this tenancy. The agent submitted a copy of the receipt for the purchase of a ten foot by twelve foot section of carpet in the tenant's bedroom. The agent also provided photographs of the marks on the carpet which could not be removed and had to be replaced. The agent noted that the joint move-in condition inspection report revealed that the carpet in the bedroom was checked as being in good condition when this tenancy began.

The tenant entered oral, photographic and written evidence that he had the carpet in his bedroom professionally cleaned at the end of this tenancy. He testified that the photograph submitted into evidence by the agent was taken before the tenant had the

carpet professionally cleaned and that the carpet in the rental unit was due for replacement by the time this tenancy ended. The tenant maintained that the carpet in this rental unit was well-worn when he moved into the rental unit. As evidence, he referred to a notation in the joint move-in condition inspection report to a cigarette burn on the living room carpet. He maintained that the damage to the carpet resulted from reasonable wear and tear during the course of the tenancy and that the landlord did not need to purchase a ten foot by twelve foot segment of carpet as his bedroom was considerably smaller than this size. The tenant also questioned the authenticity of the landlord's receipt for carpeting, as he could find no reference to the flooring company shown in this receipt on-line, nor did the GST number identified in this receipt have the required ten numbers.

The agent gave oral testimony that he could not have taken a photograph of the previous condition of the carpet prior to the tenant's cleaning of that carpet because he did not access the rental unit until after the tenant had vacated the premises. The agent explained that the flooring installer hired often conducts its work for existing carpet companies in his community and uses their invoices. He said that as the installer works for other existing companies, there is no on-line listing for this service provider.

Analysis

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The joint move-in condition inspection report of November 2011, signed by both the agent and the tenant and entered into evidence by the landlord showed that the carpet in the bedroom was in good condition at that time. If that were not the case, the tenant should have required the agent to modify the report at that time. While the living room carpet had a single cigarette burn when this tenancy began, I find little connection between the condition of the carpet in the living room to the condition of the carpet in the bedroom. The landlord's only claim was for damage to the bedroom carpet, an allegation at least partially acknowledged in the tenant's own photographic evidence of the condition of the bedroom carpet at the end of this tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

There is undisputed evidence that no joint move-out condition inspection was conducted, nor did the landlord (or her agent) give the tenant written requests to participate in one. However, section 36(2) of the *Act* does not extinguish a landlord's

right to claim against a tenant's security deposit if a tenant has abandoned the rental unit. In this case, as the tenant gave sworn testimony and written evidence that he ended his tenancy before he gave the landlord written notice of his intention to end the tenancy, I find that the tenant abandoned the rental unit. As such, the landlord's right to claim against the tenant's security deposit has not been extinguished.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "undamaged except for reasonable wear and tear"

While I have given the concerns lodged by the tenant and the tenant's assistant careful consideration, I find on a balance of probabilities it more likely than not that the landlord did incur a loss to replace carpet in the tenant's bedroom. I also find that this loss exceeded what would normally be expected as a result of reasonable wear and tear. Both sets of photographs showed dark colouration on sections of the carpet in the tenant's bedroom. In this regard, I find the photographs submitted by the landlord were clearer and revealed considerably more detail than did the tenant's photographs of the same section of carpet. I also accept the agent's explanation that new carpet comes in sections that required the landlord to purchase a ten foot by twelve foot section of carpet for this bedroom. The tenant has raised interesting questions with respect to the receipt entered into written evidence by the landlord. However, I accept the agent's explanation regarding his understanding of how the flooring installer operates this business and issues receipts. In the final analysis, I accept that the landlord has incurred actual losses resulting from the damage to the carpet in the tenant's bedroom.

The landlord is only entitled to recover that portion of the costs associated with the replacement of the carpet which exceed reasonable wear and tear. Residential Tenancy Branch (RTB) Policy Guideline 40 outlines the useful life of various elements in a tenancy. In the case of interior carpet, a landlord is expected to have to replace carpet every ten years (i.e., 120 months). In this case, the agent gave undisputed sworn testimony that the carpet in this entire rental unit was replaced approximately one and one-half years before this tenancy began. He confirmed that the carpet in the tenant's bedroom was new at the beginning of 2010. Based on this testimony, I find that the landlord had to replace the carpet in the tenant's bedroom approximately 51 months after it was last replaced (i.e., January 1, 2010 until March 28, 2014 or 51 months). This results in the landlord's entitlement to a monetary award of 57.5% of the costs she incurred to replace the carpet in the tenant's bedroom (i.e., $1.00 - 51/120 = .575$) ahead of the time it would normally have to be replaced. On the basis of the

above calculations, I find that the landlord is entitled to recover \$169.05 ($294.00 \times 57.5\% = \169.05) of the costs she incurred to replace the tenant's carpet.

As the landlord has been only partially successful in this application, I allow her to recover one-half of her \$50.00 filing fee from the tenant.

The landlord is entitled to retain a total of \$194.05 from the tenant's \$287.50 security deposit. I order the landlord to return the remaining \$93.45 ($\$287.50 - \$194.05 = \93.45) to the tenant plus applicable interest forthwith. No interest is applicable over this period.

Conclusion

I allow the landlord's claim for damage and recovery of a portion of her filing fee. I order the landlord to retain \$194.05 from the tenant's security deposit. I order the landlord to return the remaining \$93.45 from the tenant's security deposit to the tenant forthwith. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 11, 2014

Residential Tenancy Branch

