



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

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 the 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, and to make submissions. An agent spoke on the tenant's behalf.

The landlord testified that he served the dispute resolution package and Notice of Hearing on July 9, 2014 by registered mail. He provided a receipt and tracking number with respect to this mailing. The tenant confirmed receipt of this package. Based on this evidence and in accordance with sections 89 and 90 of the *Act*, the tenant is deemed served with the dispute resolution package on July 14, 2014, 5 days after the registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This claim arises out of a month to month tenancy that commenced February 1, 1994. The rental amount was paid monthly on the first of each month with the current rental

amount of \$548.00. A security deposit of \$198.00 was provided on February 1, 1994. The tenancy was ended by the tenant, with notice pursuant to the requirements of the Act on June 30, 2014. The tenant's agent testified that the tenant did not clean the walls of the rental unit at the end of the tenancy. The tenant provided her forwarding address to the landlord on June 30, 2014.

The landlord claims that the tenant is responsible for costs of repair to the walls of the rental unit as a result of tobacco stains. He seeks to retain the tenant's security deposit and obtain a monetary order beyond that deposit. The landlord seeks the following amounts;

Item	Amount
5 Gallons of white primer @ 50.00/Gallon	\$250.00
4 Hours labour to clean walls @ 35.00/hr	140.00
3 Hours priming walls @ 35.00/hr	105.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount Requested	\$545.00

The landlord indicates that these figures were based on estimates of hourly work done by staff at the residential premises. The landlord testified that he ultimately paid for the labour and the cost was higher than his estimates. The landlord did not seek to amend his claim for the actual cost incurred.

Both the landlord and the tenant's agent testified that the rental unit was originally rented as a "smoking unit". The tenant did not deny smoking in the building and the landlord acknowledged that the tenant was never advised that she could not smoke cigarettes in her unit during her twenty year tenancy. The landlord states that the property managers were aware, over the course of her tenancy, of the condition of the tenant's rental unit.

The tenant's agent testified that the rental unit had not been repainted when the tenant moved into the rental unit or at any time during the twenty year tenancy. This evidence was not disputed by the landlord. The tenant referred to the Residential Tenancy Policy Guidelines (particularly Residential Tenancy Policy Guideline #40) in his submissions, indicating that a landlord has an obligation to paint the rental unit every four years.

After attempts by both parties to jointly inspect the rental unit at the end of the tenancy, the landlord completed a condition inspection report without the tenant. The tenant does not deny smoking in this unit over the period of her tenancy but claims any deterioration of the rental unit was as a result of reasonable wear and tear.

Analysis

This tenancy ended June 30, 2014. The landlord filed an application for dispute resolution on July 8, 2014. He has met the requirements under section 38(1) of the *Act* with respect to making a claim against the tenant's security deposit.

In this case, despite the lack of a condition inspection report on move-in, the tenant does not dispute the damage alleged or the origin of that damage. The landlord provided photographic evidence that shows the damage as a result of the tenant's smoking in the rental unit during the course of her 20 year tenancy. The tenant argues that the damage illustrated by the landlord is "20 years' worth of normal wear and tear".

The Residential Tenancy Policy Guideline #1 provides direction to landlords and tenants with respect to the condition of rental units and their maintenance.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The Residential Tenancy Guideline #1 also provides direction particularly with respect to painting of the rental unit;

...The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping...

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

This unit was initially rented as a "smoking unit" and this tenancy lasted for 20 years. As the tenant's agent stated, it is the obligation of the landlord to ensure that a rental unit is maintained to a minimum standard of health and safety. It is also the obligation of the

tenant to ensure that they maintain their rental unit to a reasonable standard of health and cleanliness.

In Guideline #1, normal wear and tear is described as “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion”. The landlord claims that the damage to the rental unit is beyond normal wear and tear. The landlord provided photographic evidence to show the state of the rental unit. He testified that the smoking in the unit resulted in significant tobacco stains that required extra efforts in repairing the rental unit at the end of her tenancy.

In the absence of a no-smoking clause in the tenancy agreement, tenants *may* have the right to smoke in their own rental units. The landlord has provided evidence that this rental unit has been damaged by tobacco. However, I find that the state of the rental unit subject to wear and tear is appropriate to a 20 year tenancy.

In considering this application, I have taken into consideration Residential Tenancy Branch Policy Guideline #40 entitled “Useful Life of Building Elements.” This Guideline outlines a four year timeline for repainting a rental unit. Not only did the tenant provide undisputed testimony that the rental unit was not painted at the beginning of the tenancy, but the tenant provided undisputed testimony that the rental unit was not painted in her 20 year tenancy. Tobacco stain damage could have been mitigated had the landlord painted every four years or addressed the fact that the tenant was smoking in her unit.

I find that the landlord is not entitled to recover the costs related to painting considering the lack of maintenance of the rental unit’s walls over the past twenty years and the failure to advise the tenant with respect to her smoking habits. The twenty year tenancy would have required at least four paintings of the rental unit that, as I have indicated, may have impacted the ultimate extent of the damage to the walls from the tenant’s smoking.

The landlord testified that he continued to hold the tenant’s \$198.00 security deposit plus interest paid on February 1, 1994. Over that period, \$43.11 interest is payable. I dismiss the landlord’s application to retain any portion of the security deposit for compensation and order its return to the tenant with interest. I order the landlord to return a total of \$241.11 ($\$198.00 + \$43.11 = \241.11) from the tenant’s security deposit plus interest to the tenant forthwith.

As the landlord’s application has been dismissed, the landlord is not entitled to recover the filing fee from the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply.

I order the landlord to return the tenant's security deposit plus interest, totalling \$241.11, forthwith. In the event that this does not occur, I issue a monetary Order in the tenant's favour in this amount. 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: December 11, 2014

Residential Tenancy Branch

