



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on August 11, 2014 for:

1. A Monetary Order for damages to the unit – Section 67;
2. A Monetary Order for compensation – Section 67
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on February 19, 2015 for:

1. An Order for the return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to their respective filing fees?

Background and Evidence

The tenancy started on December 1, 2003 and ended on July 31, 2014. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. No move-in inspection was completed.

The Tenant states that the Landlord failed to return the security deposit as required under the Act and claims return of double the amount. It is noted that the application does not reflect this claim made at the hearing.

The Landlord states that the Tenants left a large burn on the linoleum floor of the kitchen. The Landlord states that they decided to replace the floor with laminate and was given an oral estimate of \$500.00 for the labour to scrape the floor and replace with the laminate. The Landlord claims \$500.00. The Parties agree that the linoleum was 20 years old at the end of the tenancy and the Tenant states that it was damaged at the start of the tenancy. The Tenant provided a photo that the Landlord states was not taken at the onset of the tenancy. The Tenant argues that the linoleum no longer had any useful life if compared with the useful life of other flooring as set out in the policy guidelines.

The Landlord states that the Tenants failed to clean the carpet at the end of the tenancy and left stains on the carpet. The Landlord states that they obtained an estimate for the cost of cleaning the carpet and claim \$300.00. The Landlord provided a copy of the estimate. The Landlord states that the carpet was subsequently replaced with laminate flooring and was not cleaned by the Landlord. The Landlord states that although the carpet was 20 years old at the end of the tenancy the carpet was in very good condition at the start of the tenancy, it was an expensive carpet and that had it not been for the stains they would have kept the carpet.

The Landlord states that the Parties agreed that the Tenants would paint the unit at move-in and the Landlord supplied the paint in a color chosen by the Landlord. The Landlord states that approximately 4 years before the end of the tenancy it was noticed that the Tenants painted one room orange and other rooms and ceilings blue. The Landlord states that she was very upset about the orange color and that although the Tenants were not told to do anything about it, they knew that the Landlord objected to the color. The Landlord states that they only wanted eggshell or beige color on the walls of the unit. The Landlord claims \$1,500.00 on this item if they are not successful with their other claimed amounts. The Landlord provided an invoice.

The Tenant states that the carpets were soiled at move-in and were cleaned during the tenancy. The Tenant states that the only areas of the carpet that could be considered good at the end of

the tenancy were those areas not in the high traffic areas. The Tenant states that the carpet was subject only to normal wear and tear.

The Tenant does not dispute that permission was not obtained from the Landlord to paint the unit colors other than provided by the Landlord. The Tenant states that at the onset of the tenancy the Landlord did not supply enough paint for the whole unit and the Tenants wanted orange for the one room so they purchased the paint at no cost to the Landlord. The Tenant states that the Landlord became aware of the orange color immediately after it was done at the onset of the tenancy and that the other walls, with the exception of a bedroom, were painted blue in 2011. The Tenant states that they maintained the paint on the walls during the tenancy at no cost to the Landlord. The Tenant provided copies of several receipts for paints and other materials. The Tenant states that given the Landlord's eviction notice, he did not have time to repaint the walls.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Policy Guideline 40 sets out the useful life of building elements. Interior paint has a useful life of 4 years; carpets and tiles are noted as having a useful life of 10 years; hardwood is noted to have a useful life of 20 years. Linoleum is not listed under this guideline.

Given that the carpet is well past the expected useful life, I accept that the damage to the carpet in the high use areas was the result of reasonable wear and tear. I also find that there was little to no value left in the carpet and that the Landlord has failed to substantiate a loss or a loss caused by the Tenant. I therefore dismiss the claim for damages to the carpet.

Although linoleum is not a listed element and without any evidence on any special nature or extraordinary quality of the linoleum, I accept that this type of flooring would reasonably have a

useful life no greater than other flooring such as hardwood. As the linoleum was at least 20 years old, I find that there was no useful life left and that the flooring therefore had no value. As there was no value I find that the Landlord has failed to substantiate that there was any loss suffered and I dismiss the claim for the costs to remove the linoleum. Based on the undisputed evidence that the Tenant did not have permission to paint the walls of the rooms a different color than originally selected by the Landlord I find that the Landlord has substantiated that the Tenant acted contrary to the Act and tenancy agreement. However in considering the loss to the Landlord and considering that the units were last painted in 2011, according to the Tenant's evidence or 4 years prior to the end of the tenancy, according to the Landlord's evidence I find that at most only an year of useful life remained on the walls at the end of the tenancy therefore reducing the loss to a quarter of the amount claimed. I also accept that extra costs are associated with the extra paint to cover the dark colors. In considering the monetary claim of the Landlord I note that the Landlord provided no monetary worksheet detailing the amounts claimed and that the application limits the amount claimed to \$1,500.00. Considering the amounts claimed for the carpets and linoleum amount to \$800.00 I find that the Landlord is left with a monetary claim of \$700.00 for the paint to which the Landlord is entitled to **\$175.00** ($700.00/4$) plus a nominal amount of **\$100.00** for the extra paint resulting in a total entitlement of **\$275.00**. As the Landlord's application has met with limited success I decline to award recovery of the filing fee.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made its application within 15 days of the end of the tenancy I find that the Landlord is not required to return double the security deposit to the Tenant. The Tenant is entitled to return of the security deposit remaining after the deduction of the Landlord's entitlement. Noting that the Tenant's application was solely for the return of the security deposit in an amount less than double and as the Tenant has been successful with its claim for the return of that deposit I find that the Tenant is entitled to recovery of the \$50.00 filing fee.

Deducting the Landlord's entitlement of \$275.00 from the security deposit of \$450.00 plus interest of \$15.91 plus the filing fee of \$50.00 leaves **\$240.91** owed to the Tenant.

Conclusion

I Order the Landlord to retain the amount of **\$275.00** from the security deposit plus interest in the amount of \$465.91 in full satisfaction of the claim.

I Grant the Tenant an order under Section 67 of the Act for **\$240.91**. If necessary, this order may be filed in the Small Claims 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: March 06, 2015

Residential Tenancy Branch

