



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sunstar Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. The owner of the rental unit was represented at the hearing by a property manager. In this decision I have referred to the property manager as the landlord and to the owner as the owner.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in January 2012 at which time the tenant paid a \$625.00 security deposit and ended on August 31, 2014.

The landlord seeks to recover the cost of re-painting part of the rental unit. The landlord testified that the tenant painted 3 walls of the rental unit a blue-grey colour. The landlord provided a copy of the tenancy agreement in which provided in part as follows:

1. There will be no painting of the wall or the ceiling or changes to any other structures or rental furniture in the suite.
2. Any painting of the suite must be approved by [the owner] and it may be a requirement to paint back to neutral colours at the end of the residency at the cost of [the tenant].

The landlord testified that at the end of the tenancy, they repainted the entire unit but required additional paint on the 3 affected walls as the colour painted by the tenant was a darker colour. The cost of the additional paint was \$450.00 as shown in the invoice submitted into evidence. They further claimed that when the tenant painted, he allowed

paint to seep onto the wood trim, so they repainted the wood trim at a cost of an additional \$200.00.

The tenant acknowledged that he repainted the walls in question but testified that the owner gave him permission and simply said she wanted to approve the colour, which she was unable to see clearly from the images he emailed to her. He stated that the owner had told him that she liked the colour. The tenant claimed that he offered many times to re-paint the unit back to its original colour, but the landlord said that he wanted to use his own painter. The tenant disputed that paint had seeped onto the baseboards.

The landlord submitted into evidence copies of emails between the tenant and the owner in which the owner stated, "Yes, you are allowed to paint as long as we agreed on the colour. Could you send another picture of the colour?" The tenant responded to this by saying, "We have painted the living room area and it is a blue grey colour."

The landlord also submitted into evidence an email and a letter, both dated August 20, 2014, in which the landlord specifically asked the tenant to re-paint the affected walls. The tenant did not deny having received this email and letter.

The landlord also seeks to recover \$210.00 as the cost of cleaning the unit after the painting had been completed. The tenant argued that he should not have to be responsible for this cost as the entire unit had been painted and as it was due for repainting in any event.

The landlord seeks to recover the cost of replacing a soap dispenser which he claims was broken by the tenant. He testified that it cost \$29.10 to purchase a replacement and \$47.25 to hire a plumber to remove the broken dispenser as it was difficult to remove. The landlord testified that he recalled the tenant having told him that he had broken the dispenser.

The tenant denied having told the landlord that he broke the dispenser and testified that the dispenser did not work throughout the tenancy. Both parties agreed that the soap dispenser was not examined or noted on the move-in condition inspection report.

The landlord seeks to recover from the tenant the costs associated with the aforementioned repairs as well as the \$50.00 filing fee paid to bring their application.

Analysis

The landlord bears the burden of proving his claim on the balance of probabilities. The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

I am satisfied that the tenant breached the tenancy agreement when he painted before having received the owner’s approval of the colour. The owner’s email very clearly stated that her approval to paint was contingent on agreeing to the tenant’s choice of colour and he completed painting before having that approval. I find that the landlord incurred a loss as a direct result of the tenant’s actions. Although he repainted the entire unit as it was due to be re-painted, the 3 walls required an extra coat of paint at a cost of \$450.00 and I find that the tenant is responsible for that cost. I find that there is nothing the landlord could have done to minimize his losses in this situation. While I find that the cost of re-painting the walls was necessary, I find that the landlord has failed to prove that paint seeped onto the baseboards. The landlord did not provide photographs of the baseboards and the tenant denied that they had been affected by his re-painting and I therefore find that for his claim for recovery of that cost, the landlord has not satisfied step 1 of the test set out above. I award the landlord \$450.00 as the cost of re-painting the affected walls. I dismiss the claim for the cost of re-painting the baseboards.

I dismiss the landlord’s claim for the cost of cleaning after painting. While it is true that the tenant’s actions required the landlord to re-paint 3 walls, the landlord chose to re-paint the entire unit and I see no reason why the tenant should be held liable for the cost of cleaning after re-painting the rest of the unit.

I also dismiss the claim for the cost of replacing the soap dispenser. I find that the landlord has not proven that the tenant broke the soap dispenser as there is no proof that it was working at the beginning of the tenancy. Although the landlord argued that the tenant did not report that the dispenser was not working, I find it entirely believable that the tenant would not report the issue if he did not need to use the dispenser.

As the landlord has been only partially successful in his claim, I find he should recover just one half of the filing fee and I award him \$25.00 for a total entitlement of \$475.00.

I order the landlord to retain \$475.00 from the \$625.00 security deposit and I order him to return the balance of \$150.00 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord will retain \$475.00 from the security deposit and is ordered to return the balance to the tenant. The tenant is granted a monetary order for \$150.00.

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: April 09, 2015

Residential Tenancy Branch

