



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 for authorization to retain part of the tenant's security deposit for damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amount claimed?
2. Is the landlord authorized to retain any portion of the tenant's security deposit?

Background and Evidence

The tenant took occupancy of the rental unit starting June 14, 2011 and the tenant paid a security deposit of \$725.00. The parties entered into a new tenancy agreement every year with the most recent agreement starting July 1, 2014 for a fixed term set to expire November 30, 2014. The tenant vacated the rental unit as of November 30, 2014.

By way of this Application, the landlord seeks authorization to retain \$336.00 of the tenant's security deposit to recover the cost of repairing the drywall and touch up painting.

The landlord submitted that the addendum to the tenancy agreement provided the following term:

- (6) The Tenant acknowledges and agrees to mend any holes, touch up or repaint the wall(s) and/or any surfaces as the case may be, before moving out, to the same colour code before the Tenant's moving in, if those damages are due to the

action of the Tenant, other occupants or visitors etc. Such remedial work is to be done by the Tenant at the Tenant's cost because it is not normal wear-and-tear.

[reproduced as written]

The move-in and move-out inspection report indicates the following with respect to wall damage: there was a crack by the entry door at the beginning of the tenancy and at the end of the tenancy; a crack and discolouration above the fireplace was present at the start and end of the tenancy; the master bedroom wall had some discolour at the start of the tenancy; that in the master bedroom ensuite there were paint patches on the wall at the end of the tenancy; there were cracks by the window in bedroom 2 at the beginning and end of the tenancy; in the den the paint was cracked and rippled and there was a dent by the entrance at the start of the tenancy whereas at the end of the tenancy there were paint patches on the wall; and, in the laundry there were marks on the wall at the start of the tenancy.

The landlord submitted photographs of walls that appear to have been patched but not painted.

The landlord submitted an invoice dated December 10, 2014 in the amount of \$336.00 for "fixing damaged wall with touch up painting."

The landlord testified that the rental unit had not been painting during the tenancy; that the unit was constructed in 2008; and, that it was reasonably likely the unit was last painted in 2008.

The tenant testified that the rental unit had not been painted before his tenancy started as there were pre-existing damage and nail holes when he moved in. The tenant also attributed some of the wall damage to settling cracks. The tenant admitted that he did hang some pictures on the wall but that he was advised by the landlord's agent at the time that it was sufficient to patch the holes at the end of the tenancy, which he did. The tenant submitted that he did not paint over the patches because a landlord is expected to paint after four years.

Analysis

The Act provides that a tenant is required to leave a rental unit undamaged at the end of the tenancy and if the tenant leaves the rental unit damaged the landlord may pursue the tenant for recovery of the landlord's loss related to the damage. However, the Act

also provides that reasonable wear and tear is not damage. Accordingly, a tenant is not responsible for paying to rectify reasonable wear and tear.

Residential Tenancy Policy Guideline 1 provides that landlords are expected to paint the rental unit at reasonable intervals and that it is expected that tenants will hang artwork. A landlord may stipulate how a tenant is to hang artwork in the tenancy agreement and the tenant is expected to comply. However, if the tenancy agreement is silent with respect to ways a tenant may hang artwork, a reasonable number of holes in the drywall is considered normal wear and tear.

If a landlord includes a term in a tenancy agreement that conflicts with the Act section 6 of the Act provides that the term is not enforceable. The term in the addendum to which the landlord pointed appears to recognize that the tenant is required to mend damage caused by the tenant, other occupants, or visitors; however, the term also goes on to state that mending any holes is the tenant's responsibility because it is not normal wear-and-tear.

Upon review of the tenancy agreement and the addendum, I note that the landlord does not stipulate how the tenant must hang artwork. As such, I find it reasonable to expect that the tenant would hang artwork and create a reasonable number of holes in the drywall. Thus, I find the term in the addendum that provides that any holes in the walls is not wear and tear conflicts with the Act and I find the term unenforceable.

Considering the above, I hold the tenant responsible to compensate the landlord for any loss associated to damage that he may have caused during the tenancy, but the tenant is not responsible for compensating the landlord for wear and tear associated living in the unit for nearly 3.5 years and hanging a reasonable amount of artwork. Nor, is the tenant responsible for paying for pre-existing damage. Further, Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* provides that interior paint has an average life of 4 years and considering the last time this unit was painted was approximately 7 years ago I find the tenant not responsible for painting the unit.

Upon review of the move-in inspection report, I note that there were a number of areas that had pre-existing wall damage; however, the invoice provided by the contractor who repaired and painted the walls did not specify which areas he repaired and repainted at a cost of \$336.00 and the contractor did not break out the cost of repairs versus the cost of re-painting.

In light of all of the above, I find it reasonably likely that the amount invoiced by contractor includes the cost to repair pre-existing damage, reasonable wear and tear

and repainting for which the tenant is not responsible and based upon the evidence before me I am unable to determine the loss associated to damage caused by the tenant, if any. Therefore, I deny the landlord's request for compensation of \$336.00 from the tenant as requested. I also deny the landlord's request to recover the filing fee paid for this application.

Having denied the landlord's request to make deductions from the security deposit, I order the landlord to return the security deposit in the full amount to the tenant without further delay.

Pursuant to Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$725.00 to ensure the landlord refunds the security deposit to the tenant.

Conclusion

The landlord's Application has been dismissed and the landlord has been ordered to return the security deposit to the tenant in the full amount of \$725.00. The tenant has been provided a Monetary Order in the amount of \$725.00 to ensure payment is made.

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 04, 2015

Residential Tenancy Branch

