



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to retain a portion of the security deposit to cover the cost of cleaning, repairs and for loss of income. The landlord is also filing for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on May 15, 2011 and ended on April 30, 2015. The rent was \$1,250.00 payable on the first of each month. Prior to moving in the tenant paid a security in the amount of \$625.00.

A move out inspection was conducted on April 30, 2015 and a copy of the report was filed into evidence. Discrepancies were noted on the report and during the inspection, the landlord attempted to negotiate a settlement for the cost of cleaning and repairs. The tenant did not agree and did not sign the report. The tenant provided his forwarding address to the landlord on April 30, 2015. The landlord made this application in a timely manner on May 13, 2015.

The landlord's evidence indicates an excessively large number of holes in the walls that are filled with putty. The tenant agreed that some of the holes were not sanded. The tenant also agreed that she had cut a cat door in one of the doors but stated that she had the landlord's permission and had also patched the door.

The landlord pointed out that the patch on the door was not sanded and he incurred extra costs for sanding and priming the walls and doors. The landlord filed an invoice in the amount of \$2,763.85 but is only claiming the cost of wall repair and priming in the amount of \$875.00. The landlord testified that the unit was last painted in 2006.

The landlord also filed photographs that show that the base of the toilet and a shelf in the refrigerator had been left in a dirty condition. The tenant stated that she cleaned the unit thoroughly but agreed she may have missed the refrigerator shelf. The landlord is claiming \$190.00 for sanding and cleaning and has filed an invoice to support his claim. The tenant filed her own evidence to show that the unit was left in a clean condition and that she had patched the holes in the walls.

The landlord testified that he started looking for a tenant immediately but could not rent the unit on May 01, 2015 due to the condition of the walls. The unit was rented on May 15, 2015 and the landlord is claiming a loss of income in the amount of \$300.00 for a portion of the time that the unit was vacant.

Analysis

Residential Tenancy Policy Guideline #1 addresses the landlord and tenant's responsibility for the residential premises. A section of this guideline states:

Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

In this case, I have reviewed the photographs filed into evidence by both parties and I find that the tenant made an excessive number of holes in the walls and also cut out a cat door in a door. The tenant made attempts to fill the holes but admitted that not all of them were sanded. The tenant argued that some of the holes were already there at the start of tenancy and the landlord agreed that there were a reasonable number when he occupied the rental unit prior to this tenancy.

Based on the photographs and testimony of both parties, I find that there are an excessive number of holes that are patched and some of them are not finished. Accordingly I find that the tenant is responsible for a portion of the cost to repair the holes.

The landlord has not claimed the cost of painting but has claimed for the repair to the walls and door. Since the landlord would be responsible for wear and tear and repairs for a reasonable number of holes in the wall, I find it appropriate to award the landlord \$250.00 towards his claim of \$875.00, which includes sanding of the patches.

The tenant stated that the unit was left in a clean condition. The landlord filed photographs that show that two minor spots were missed. The invoice filed by the landlord is for labour at the rate of \$20.00 per hour. Based on the photographs, I find it appropriate to award the landlord \$20.00 for one hour of cleaning.

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior painting is four years. The landlord painted the rental unit in 2006 and therefore by the end of the tenancy, the painting had outlived its useful life. Accordingly, the landlord was required to paint prior to the arrival of the new tenants. Since the landlord was responsible for the cost of painting, I find that he is not entitled to the loss of income he suffered due to the time taken to paint the unit. Accordingly his claim for loss of income in the amount of \$300.00 is dismissed.

The landlord has proven a portion of his claim and therefore I award the landlord the filing fee in the amount of \$50.00. Overall the landlord has established a claim of \$320.00 which consists of \$250.00 for wall repair, \$20.00 for cleaning plus \$50.00 for the filing fee. I hereby order that the landlord retain this amount from the security deposit and return the balance of \$305.00 to the tenant. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$305.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$305.00**.

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: September 29, 2015

Residential Tenancy Branch

