



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing dealt with the landlord's application under the *Residential Tenancy Act* ("the *Act*") for a monetary order for damage or loss pursuant to section 67 and authorization to retain all or a portion of the tenants' security and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. Both tenants confirmed receipt of the landlord's Application for Dispute Resolution packages for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenants' security and pet damage deposit in partial satisfaction of the monetary order requested?

Background and Evidence

This tenancy began on November 1, 2014 was intended as a one year fixed term tenancy. The tenants vacated the rental unit on July 31, 2015. A copy of the residential tenancy agreement was submitted as evidence at this hearing. The agreement indicated that a rental amount of \$2900.00 was payable on the first of each month. The landlord confirmed that she continues to hold a \$1450.00 security deposit and a \$1450.00 and pet damage deposit paid by the tenants at the outset of this tenancy. The tenants provided sworn undisputed testimony that they provided their forwarding address to the landlord on July 31, 2015. The tenants both provided undisputed sworn

testimony that the landlord did not return any portion of the security deposit prior to the date of this hearing.

The tenants both testified that when they vacated the rental unit July 31, 2015, they ensured the rental unit was fully cleaned and they returned the keys to the landlord. The landlord's representative testified that the unit was dirty and needed some painting. The landlord's representative confirmed that no photographic evidence was submitted for this hearing. The landlord submitted receipts to indicate the cost incurred by the landlord. Those receipts described drywall repairs at \$362.25 and 4 hours of cleaning at \$100.00 for a total cost of \$362.25.

The landlord submitted a copy of a condition inspection report to provide evidence of damage to the rental unit and the need for cleaning. She testified that some of the cabinets were removed; the paint used for touch-up by the tenants was not the correct paint and that several hours of cleaning were required. The condition inspection move-out report had most boxes merely checked off. The landlord testified that the checked off boxes represented satisfactory areas of the home on inspection. The landlord pointed to approximately 10 boxes noted "DT" for dirty. The areas indicated as dirty were;

- Dirty baseboards in living room;
- Dirty window in living room;
- Dusty fireplace in living room;
- Dirty and non-functioning blind in stairwells;
- Dirty toilet, window and fan in washroom;
- Floor and window dirty in garage.

Both tenants signed the condition inspection report indicating that the report fairly represents the condition of the unit. Both tenants testified that, while they agreed on the condition of the rental unit, they did not agree to any deductions. They submitted that most of the dirty areas were minimal and more appropriately considered reasonable wear and tear and therefore there should be no deduction from their security deposit.

At the bottom of the condition inspection report, a signature box states that the tenant "agree to the following deductions from my security and/or pet damage deposit." Tenant F signed in this part of the report. However, the landlord did not fill in any amounts, estimates or otherwise: the landlord merely put question marks after cleaning and repairs.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. The landlord has applied to retain the tenants' security and pet damage deposit within 15 days of the end of tenancy and the receipt of the tenants' forwarding address. Therefore, the landlord was entitled to make an application claiming all or a portion of that deposit.

If damage or loss results from a tenancy, an arbitrator may determine that the tenant is responsible to the landlord for that damage or loss. In order to claim for damage to the rental unit or other loss under the *Act*, a landlord bears the burden of proof. The party claiming loss (in this case the landlord) must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Under section 72(2) of the *Act*, any amount found owing to the landlord from the tenant may be deducted from the security deposit from this tenancy.

The landlord sought to retain \$462.25 from the tenants' security and/or pet damage deposit. While the landlord applied to the Residential Tenancy Branch to retain the tenants' deposits within the allowable timeframe, the landlord submitted minimal evidence to prove that the tenants left the rental unit in a poor condition, particularly with respect to the claim of damage and the need to re-paint the rental unit in its entirety. I note that Residential Tenancy Regulation section 21 provides that

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

I find that the condition inspection provides evidence that the rental unit required cleaning and that the tenants were willing to agree to some deduction. However, I do not find that the need to paint the whole unit is clearly evidenced by the report.

Beyond the condition inspection report, the landlord submitted two invoices; one invoice (\$100.00) for 4 hours cleaning and one invoice (\$362.25) as evidence. The cleaning receipt clearly indicates a date of July 31, 2015 – the date the tenants vacated the rental unit – and clearly indicates the rental unit number. The repair receipt also indicates the

rental unit address but does not specify the work done. The invoice reads, “dry-wall repairs and paint throughout”. As the landlord was unable to provide photographic evidence or further details to particularize the painting work done, I am unable to properly assess what portion, if any, might be attributable to the tenants. Furthermore, any assessment would be of limited value in that the landlord’s agent was unable to provide information as to when the rental unit was last painted. The Residential Tenancy Policy Guidelines suggest that a rental unit should be painted approximately every 4 years. Without further information on the age of this rental unit and the last time work was done on the unit, I do not find that the landlord has presented sufficient evidence that the tenants should be responsible for painting.

I allow the landlord to retain \$100.00 for the cleaning of the rental unit. I dismiss the landlord’s request through this application to recover the cost of the painting. The rest of the security and pet damage deposits (\$2800.00) should be returned to the tenants.

Conclusion

I allow the landlords to retain \$100.00 from the tenants’ security and pet damage deposits. The tenants’ deposits are reduced to total \$2800.00 and I order that the landlord return those deposits to the tenants.

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 1, 2016

Residential Tenancy Branch

