



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Due to an issue with evidence, the "first hearing" on October 3, 2016 was adjourned to allow the parties an opportunity to respond. The tenant and landlord attended both hearings. In both hearings, all parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue - Service of Documents

At the first hearing, I provided specific instructions to the parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision adjourning the first hearing and outlining these specific instructions.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any further issues regarding service of the application or the evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the testimony of the parties, the tenancy began on November 28, 2009 on a fixed term until November 27, 2010 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,600.00 was payable each month. The tenant remitted a security deposit in the amount of \$800.00 at the start of the tenancy. The tenant vacated the rental unit on April 28, 2016.

The parties agreed that move-in and move-out condition inspection reports were completed. The parties agreed that at the time of move-out, the tenant agreed to have an undisclosed amount deducted from his security deposit for the cost of steam cleaning the carpet. The move-out condition inspection report reflects this agreement.

Landlord Claim and Tenant's Reply

The landlord testified that he is seeking \$4,378.26 in damages.

Carpet

The landlord testified that after the move-out inspection was completed, he hired a professional to assess the carpets and was advised by the professional to replace the carpets. The landlord did not clean the carpets but instead replaced the carpets with laminate. The landlord provided photographs of the carpet taken at the end of the tenancy. The landlord submitted a receipt in the amount of \$2,400.00 and seeks to recover this amount from the tenant.

In reply, the tenant testified that upon move-in the carpet had stains and it is his position that any new stains could have been removed with cleaning. Further, at the end of the tenancy he only agreed to deduct the cost of shampooing, not the cost of replacement.

Window

The landlord testified that during the move-out condition inspection, a cracked window in the den was not noted because the blinds were closed. The landlord provided photographs of the cracked window taken after the tenant had vacated the rental unit. The landlord testified that the cracked window was reported by a realtor who attended the rental unit on May 4, 2016. The landlord has provided a witness statement from the

realtor and a copy of the window replacement receipt in the amount of \$403.26. The landlord seeks to recover this amount from the tenant.

The tenant testified that he was unaware of the cracked window until such time that the landlord notified him after he had vacated the rental unit. The tenant recalls the blinds were up and not closed during the move-out inspection.

Paint/Repair

The landlord testified that the rental unit was repainted at the start of tenancy and required further painting at the end of tenancy. The landlord also submits that the tenant is responsible for a damaged door frame to the master bedroom, a missing closet rod, burned power socket, scratched bathroom door and damaged door hinge. The landlord has submitted photographs of the above and a copy of a receipt in the amount of \$1,575.00. The landlord seeks to recover this amount for the paint and repair of the rental unit.

The tenant testified that the unit was painted at the start of tenancy but testified it was not a "good" paint job. He testified that the bathroom door was scratched prior to his occupancy and is not familiar with any missing rod from the closet. In relation to the hinge, he testified that the door is heavy and always had an issue closing.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The landlord seeks reimbursement in the amount of \$2,400.00 for carpet, \$403.26 for a window repair and \$1,575.00 for painting and other miscellaneous repairs for a total claim of \$4,378.26.

Carpet

Although the landlord provided evidence in the form of pictures that the carpets contained stains and the tenant acknowledged some stains, I find the landlord failed to mitigate his loss by at least attempting to remove the stains through carpet cleaning. The landlord failed to provide documentary evidence to substantiate his position that a professional deemed the carpets unsalvageable. For these reasons, I find the landlord failed to meet the last part of the test above and dismiss the landlord's claim to recover \$2,400.00 for the removal of carpet and installation of laminate.

Window

The cracked window was not noted during the move-out condition inspection report and as acknowledged by the landlord was not observed until some days later. The invoice submitted by the landlord describes the damage as:

“Crack starts at setting block – points to building settlement – close to lots of new construction – may have shifted and cracked – no impact point.”

[Reproduced as written]

For the above reasons, I find the landlord has failed to show the tenant caused the cracked window thereby failing to meet the second part of the test above. I dismiss the landlord's claim to recover \$403.26 for the window replacement.

Paint

The *Residential Tenancy Policy Guideline* establishes that a landlord is responsible for painting the interior of the rental unit at reasonable intervals and the tenant may only be held liable for paint if proven the tenant has caused deliberate or negligent damage to the walls. The landlord has provided insufficient evidence to establish that the walls were damaged or neglected by the tenant. The move-out condition inspection report does not indicate damaged walls and the photographs do not depict any damage to the walls. As the landlord has not proven damage, I find the landlord has failed the first part of the test above and therefore dismiss the landlord's claim to recover painting costs.

Repair

In relation to the miscellaneous repairs I find the landlord has failed the second and third part of the test above. Specifically, the move-in and move-out condition inspection reports do not list any of the damage now claimed by the landlord with the exception of the scratched bathroom door which is noted on the move-in condition inspection report.

Therefore it is not evident whether the tenant created this damage or it occurred after his vacancy. Further the landlord has provided one invoice in the amount of \$1,575.00, which does not include a breakdown of the actual amount required to fix each deficiency. For these reasons, I dismiss the landlord's claim to recover \$1,575.00 for paint and repair.

Filing Fee

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Security Deposit

Because the landlord has not established a damage claim, I find the tenant is entitled to the return of his \$800.00 security deposit and grant a monetary order in this amount.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I grant the tenant a monetary order in the amount of \$800.00.

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: December 22, 2016

Residential Tenancy Branch