



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended the landlord's agent; the tenant and her advocate.

Prior to the hearing I noted that the landlord had provided a total claim amount on her Application that was different than what was identified on her Monetary Order Worksheet. At the outset of the hearing I had the landlord clarify the breakdown of the claim she sought in this Application as follows:

- ½ month's rent for February 2016: \$375.00
- Painting: \$393.75
- Cleaning: \$60.00
- Repair of a cabinet door: \$10.00

- Total \$838.75 plus the filing fee

After this clarification the landlord requested to withdraw the claim for ½ month's rent. I accepted this amendment to her claim as it reduced the total amount of the claim and find no prejudice to the tenant to do so.

During the hearing the tenant and her advocate submitted that they had not received any photographs from the landlord despite receiving the landlord's Application package and her later package of documentary evidence.

The landlord testified that the photographs were served to the tenant at the time their Application package was sent to the tenant. The tenant did not remember receiving any photographs and her advocate has never seen any photographic evidence. I noted that the Residential Tenancy Branch received the landlord's photographic evidence on March 22, 2016 in an envelope dated March 17, 2016.

As the Notice of Hearing document for the originally scheduled hearing was printed on March 15, 2016, I find the landlord's submissions are consistent with the time frame of when they would have likely served the photographic evidence. As a result and in consideration that tenant cannot remember if she received the photographs, I prefer the landlord's testimony regarding the services of her photographic evidence.

Therefore, I find on a balance of probabilities the landlord served the tenant and the tenant received the landlord's photographic evidence pursuant to the requirements of evidence service outlined in the Residential Tenancy Branch Rules of Procedure. As a result, I have considered this evidence as part of this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to monetary order for cleaning; painting; and cabinet repair; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on September 16, 2015 for a 1 year fixed term tenancy beginning on October 1, 2015 for a monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid; and
- A copy of a Condition Inspection Report recording the condition of the rental unit on September 15, 2015 prior to the start of the tenancy and on March 1, 2016 at the end of the tenancy. The Report is signed by both the landlord and the tenant for the move in condition but only by the landlord for the move out condition.

The tenant submitted into evidence a copy of a settlement agreement between the parties that resulted from a previous dispute resolution hearing that included an agreement between the parties that the tenancy would end on February 1, 2016 at 1:00 p.m.

The landlord submitted the condition inspection was set for March 1, 2016 at the tenant's request. The parties agreed that the tenant attended the inspection. The tenant submitted the inspection was rushed because her husband was waiting for her, the landlord submitted she believed a taxi was waiting for the tenant.

The tenants advocate submitted that despite the tenant's attendance at the move out condition inspection there is no evidence that the landlord had fulfilled their obligations

to provide written notice of the final opportunity to attend the inspection and the landlord has therefore extinguished their right to claim against the deposit.

The landlord submitted that the tenant uses a wheelchair and as a result the tenant had caused some damage to the walls and doors. She submitted that the tenant had someone fix the damage to the walls and paint it, however they used white paint and the walls were brown in colour.

The landlord seeks compensation in the amount of \$393.75 for painting this area. In support of this claim the landlord submitted into evidence, in addition to the Condition Inspection Report, photographs and a copy of an invoice from their painter.

The tenant's advocate submits that due to the tenant's reliance on a wheelchair any of the damage that occurred as a result of the chair should be considered as reasonable wear and tear and the tenant should not be held responsible for painting.

The landlord also seeks compensation in the amount of \$60.00 for cleaning of the rental unit. The landlord acknowledged that the tenant had had someone clean the unit for her but that it had not been sufficiently cleaned. In support of this claim the landlord has submitted, in addition to the Condition Inspection Report, photographs and an invoice from their cleaner. The tenant dispute there was a need for cleaning. The tenant submitted that she hired someone to complete the cleaning and the landlord has provided no evidence that there was a need for cleaning.

The landlord also seeks \$10.00 for the purchase of wax crayons that were used to repair scratches on doors in the rental unit. In support of this claim the landlord has submitted, in addition to the condition inspection report, a photograph of the damaged doors. The tenant submits this should be considered wear and tear..

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(2) stipulates that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the Act and Section 17 of the Regulation; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

From the submissions of both parties, I am satisfied the tenant agreed to a time to attend the move out inspection and as such, the landlord was not required to issue a notice for the final opportunity to attend a move inspection. As a result, I find the landlord has not extinguished their right to claim against the deposit held.

Section 37 of the Act states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find the landlord's photographic evidence is sufficiently compelling to confirm that the painting required was not the result of reasonable wear and tear because of the tenant's use of a wheelchair but rather the result of the tenant's attempt to repair damage.

While tenants are expected to make repairs to any damage prior to the end of a tenancy, I find that by using a colour to paint the walls that was distinctly different than the original wall colour the tenant has failed to complete the repair and as result the landlord has suffered a loss.

I am also satisfied the landlord has established the value of that loss at \$393.75 through the invoice submitted into evidence.

In regard to the landlord's claim for compensation for cleaning, I find the Condition Inspection Report and photographs do not provide any indication that the landlord had been dissatisfied with the cleanliness of the rental unit. While the invoice submitted by the landlord for this claim is very specific about what was cleaned in the rental unit the Condition Inspection Report does not record a need for cleaning of any of these items.

As such, I find the landlord has failed to provide sufficient evidence to establish the rental unit required any cleaning at the end of the tenancy. I dismiss this portion of the landlord's claim.

Finally, in regard to the landlord's claim for \$10.00 for a wax crayon to repair damage on doors, I find the landlord's photographic evidence confirms damage to the doors. In the absence of any detail from the tenant as to how this occurred, I find that this damage exceeds reasonable wear and tear and the landlord is entitled to the compensation as claimed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$503.75** comprised of \$393.75 painting; \$10.00 door repairs; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$128.75**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 13 2017

Residential Tenancy Branch