



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 pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72

CM ('landlord'), appeared on behalf of the landlord for this hearing, and had full authority to do so. NC, the tenants' advocate, led evidence on behalf of the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenants confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the Application. All parties confirmed receipt of each other's' evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in satisfaction of their monetary claim?

Is the landlord entitled to recover the filing fee from the tenants for this application?

Background and Evidence

This month-to-month tenancy began in February 2014, with monthly rent set at \$845.00. The landlord collected and still holds, a \$407.50 security deposit. The tenants moved out on

February 28, 2017, and a forwarding address was provided to the landlord on the condition inspection report completed on February 28, 2017. A copy of this report was submitted in the tenants' evidence.

The landlord testified that the entire rental suite was last painted in November of 2013, and the tenants had moved into the rental suite in February 2014. The landlord is requesting a monetary order of \$200.00 to cover the cost of re-painting, which was completed by the landlord's handyman. The landlord testified that a move in and move out inspection was completed, but the tenants had refused to sign it.

The tenants' advocate stated that the tenants had resided in the suite for almost three years. As the unit was last painted in November 2013, the advocate testified that the walls have almost reached their useful life of four years, and that the damage should be considered normal wear and tear. The tenants submitted colour photos and cleaning invoices in their evidence to support that the tenants had returned the rental unit in clean condition.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenants submitted receipts for professional cleaning, for the carpet, the draperies, and for the apartment. The landlord provided a copy of the condition inspection report with "poor" indicated as the condition for "walls & trim" at the end of the tenancy. The condition was noted as "good" at the beginning of the tenancy for these items. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the useful life of the interior painting, which was last done in November of 2013. As per this policy, the useful life of interior painting is four years, and therefore at the end of the tenancy had approximately nine months of useful life left. Although the interior painting is nearing the end of its useful life, there is still nine months left according to the guideline. The landlord completed a condition inspection report at the beginning and end of this tenancy as required by sections 23 and 35 of the *Act*, which noted "poor" as the condition of the walls and trim upon move-out. Although I find that the tenants had established that they had taken steps to return the suite to the landlord in a reasonably clean and undamaged condition, as supported by the photos and the \$327.75 in professional cleaning receipts submitted by the tenants, I find the landlord provided sufficient evidence to support that the tenants had damaged the walls and trim beyond what could be considered regular wear and tear. Accordingly, I find that the landlord is entitled to \$37.50 ($\$200.00 \times 9 \text{ months} / 48 \text{ months} = \37.50), which is the approximate prorated value of the remainder of the useful life of the carpet.

As the landlord was successful in their application, I find the landlord is entitled to recover the cost of the \$100.00 filing fee for this application.

The landlord continues to hold the tenants' security deposit totaling \$407.50. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I find that the landlord is entitled to \$37.50 in compensation for the damage caused by the tenants.

I find the landlord is entitled to recover the cost of the \$100.00 filing fee for this application.

I order that the landlord return to the tenants their \$407.50 security deposit minus the \$137.50 in satisfaction of the monetary claim, and which allows the landlord to recover the filing fee for this application. I issue a monetary Order in the amount of \$270.00 in the tenants' favour. The tenants are provided with this Order, and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: June 26, 2017

Residential Tenancy Branch