



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. . The landlord testified that they served the Application for Dispute Resolution dated June 15, 2018 on the tenant by registered mail and the tenant acknowledged receipt. I find the documents were legally served pursuant to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, and 67 for damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that the tenant damaged the property and that it was beyond reasonable wear and tear? What is the cost of the losses incurred by the landlord? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It was undisputed that the tenancy commenced in November 2010, that current monthly rent was \$1700 and a security deposit of \$712.50 was paid. It was agreed that the tenant vacated on May 31, 2018 and provided their forwarding address in writing on May 31, 2018 at the time of the move-out inspection. They did not agree that the landlord could retain any of their deposit and the landlord filed their application to claim against it on June 15, 2018.

The landlord provided an invoice for \$1575 to repaint the unit and photographs to show there were many marks on the walls which required them to repaint. I note no gouges or other damages showed in the photographs. The tenant said the unit had not been repainted since they moved in. As the paint was 7 years old at the end of their tenancy, they claim any marks were the result of reasonable wear and tear. They noted Policy Guideline 37.1 provides a useful life for paint of 4 years.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the landlord's evidence credible that this tenant caused some marks on the walls that necessitated repainting the unit at a cost of \$1575. I find the landlord is willing to accept compensation of \$712.50 in full satisfaction of this cost. However, Policy Guideline 37.1 assigns a useful life for elements in building premises which is designed to account for reasonable wear and tear. As the paint in this unit was 7 years old at the end of the tenancy, I find it was beyond its useful life so the repainting is the result of "reasonable wear and tear". I find the tenant is not responsible to compensate the landlord for damage that is the result of reasonable wear and tear.

I find the tenant is entitled to the refund of their security deposit of \$712.50. I find the landlord filed this Application to claim against it within the 15 days allowed under section 38 of the Act so they avoided the doubling provision of section 38..

Conclusion:

I dismiss the application of the landlord in its entirety and find them not entitled to recover the filing fee due to lack of success. I find the tenant entitled to a monetary order for \$712.50 for a refund of their security deposit.

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 20, 2018

Residential Tenancy Branch