



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for damages to the rental unit pursuant to Section 67, and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on April 15, 2009. The landlords have provided the Canada Post tracking number and the tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party and witnesses. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord provided sufficient evidence of the damages and cleaning that is required to be carried out?
- Is the landlord entitled to a Monetary Order to recover costs for repair to damages and cleaning of the rental unit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?
- Is the landlord entitled to keep all or part of the security deposit and interest?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on December 01, 2006 and ended on March 25, 2009. The tenant paid a security deposit of \$362.50 on November 15, 2006. A move in condition inspection report was completed at the start of the tenancy. At the end of the tenancy the landlord states that the tenant left them a note stating that he would not be attending the move out condition inspection and gave them his forwarding address. The landlords claim that they made three phone calls to the tenant to schedule a move out condition inspection report. The tenant disputes this as he had given the landlords his sisters' telephone number where he would be staying and when the landlords did phone to confirm his address they did not mention attending for the move out inspection.

The move in condition inspection report details areas of the rental unit that had been identified by the property manager as requiring attention before the tenancy began. This details the blinds being dirty, small stain on bedroom carpet, linoleum in the kitchen and mildew on the living room wall. The walls and ceilings mentioned on the report state that these areas were in good condition at the outset of the tenancy. The tenant has signed this report and agreed to the condition of the suite.

The landlord claims that after the tenant left the rental unit they had to repaint the entire unit due to the walls, ceiling and door trims being nicotine stained. They suggest that the tenant smoked in the rental unit. The landlords have produced the tenancy agreement which stipulates that this is a non smoking rental unit. The walls, ceiling and doors had to be washed and a sealant applied prior to painting to prevent the stains coming back through. The painter that carried out this work gave his evidence as to the condition of the unit and the work involved to rectify this. The painter had to also prime and redecorate a bedroom which had been painted deep red.

The maintenance man for the building gave evidence to the work he carried out in the rental unit. He testifies that he had to replace a closet door knob, replace a broken door frame and replace missing light bulbs. The landlord is also claiming three hours of additional cleaning costs and the costs of cleaning the blinds. The landlord confirmed that the tenant had made good attempts at cleaning the rest of the unit.

The advocate for the tenant questions the tenant about the condition of the unit. She asks the tenant if he smokes and the tenant testifies that he does not smoke. The advocate claims that the stains on the wall could have been due to the cooking grease and dust from outside because the rental unit did not have any extractor fans fitted. The tenant claims that due to the unit being broken into previously he was unable to leave his windows open as he was on the ground floor. The advocate questioned the painting contractor about whether these stains could be caused by grease build up and dust. In the professional opinion of the contractor they were caused by nicotine.

The advocate questions the landlord as to why the work originally identified on the move in condition inspection was not carried out at the outset of the tenancy. The landlord testifies that she does not know but is in agreement that the claim for cleaning the blinds can be withdrawn.

The tenants witness testifies that the bedroom was already painted a deep red when the tenant moved in. As this is not included on the move in inspection report and the landlord did not see the unit at the start of the tenancy she is in agreement that this portion of the painting costs can be removed from the claim.

Analysis

Test for damage or loss claims

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for compensation for damages meets most of the components of the above test. The landlord has provided the move in and move out condition inspection report. The landlord has provided invoices from contractors; the landlord has also provided photographic evidence. The landlord has submitted evidence to support their claim in respect of the painting of the rental unit with the exception of the bedroom which by their own admission could have already been painted red before the tenant took over the unit. Therefore a 1/5th amount will be deducted from this section of the claim. The tenant is unable to provide evidence that the unit smelled of smoke or was nicotine stained before he moved in.



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that the landlord has submitted sufficient evidence to support their claim for damages to the door frame, for the replacement of the closet door knob and for the light bulb replacement. The condition inspection report identifies that the blinds were already dirty and so this section of the claim for cleaning is dismissed.

The tenant cleaned the rental unit prior to moving out to a satisfactory condition as agreed by the landlord. Under the *Residential Tenancy Act*, s. 32 a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required in respect to general cleaning of the rental unit.

As the landlord did not discover the work that had to be carried out to the rental unit until after the tenant had moved out it would not have been possible for them to take action prior to that date for the damages that had occurred. However, the landlords are at fault for not rectifying the items identified in the move in condition inspection report at the start of the tenancy. As the landlord has been partially successful in this matter, they are also entitled to recover their \$50.00 filing fee for this proceeding. The landlord will receive a monetary order for the balance owing as follows:

Preparation and painting the rental unit	\$1533.00
Damage to door frame, replacement door knob and light bulbs.	\$56.49
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$373.70)
Total amount due to landlord	\$959.19



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$959.19**. The order must be served on the respondent and is enforceable through the Provincial Court 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 11, 2009.

Dispute Resolution Officer