Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

FINAL DECISION

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

MND For Damage to the Unit, Site, Property

MNR Unpaid Rent or Utilities

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for utilities owed, compensation for cleaning the unit and money owed or compensation for damage or loss under the Act.

Both parties appeared and each gave testimony in turn..

Preliminary Matters

Recording

At the outset of the hearing on February 8, the landlord advised that the hearing was being recorded. The landlord was informed that , under Rule 9.1, the Residential Tenancy Rules of Procedure prohibit recording of the hearing and specifically stating that, "*Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted*."

Rule 9.2 contains provisions in regards to arranging official recording and states that,

"*a party requesting an official recording by a court reporter must provide written notice stating the reasons for the request, to the other party and to the Residential Tenancy Branch at least two (2) business days in advance of the dispute resolution proceeding. A Dispute Resolution Officer will determine whether to grant the request and will provide*

written reasons, if requested. If permission is granted for an official recording of the dispute resolution proceeding by a court reporter, the party making the request must:

(a) make all necessary arrangements for attendance by a court reporter and court reporter's necessary equipment;

(b) pay the cost of the court reporter's attendance at the dispute resolution proceeding, and the recording; and

(c) must provide all parties with copies of the recording, transcript, or both, as ordered by the Dispute Resolution Officer. "

Missing Evidence

At the hearing held on February 8, 2010, the landlord advised that evidence consisting of receipts for work done had not been submitted and requested permission to submit this evidence and have it considered.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the Dispute Resolution Officer must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. Even if the Dispute Resolution Officer decided to accept the evidence, the other party must still be given an opportunity to review the unseen evidence before the application can be heard. This would necessitate a determination

about whether or not the matter should be adjourned to a future date to allow service of the evidence, and would require submissions on the subject from both parties.

In this instance, the landlord stated that he had already served the documents in question to the respondent and therefore I find that late submission to the file would not be prejudicial to the other party. Accordingly, I determined that this evidence would be accepted for consideration as it has already been properly served on the respondent. The landlord submitted copies of the documents to the file.

Adjournment

During the proceedings on February 8, 2010, testimony was heard from both parties on the landlord's monetary claim regarding the utilities and cost of labour for cleaning, painting and repairing the unit. A determination has already been made on these particular matters and was issued in an interim decision dated February 8, 2010. However, as the time scheduled for that hearing had ended prior to testimony relating to the landlord's claims for other damages, including costs for materials and breach of contract and there was no time left to hear witnesses, the hearing on these additional matters was adjourned and reconvened on April 6, 2010 to be heard. No further documentary evidence was permitted from either party after the first leg of the hearing on February 8, 2010.

Issue(s) to be Decided

The landlord was seeking a monetary order for accumulated arrears for utilities owed and for compensation for cleaning and repairs to the rental unit.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages, utilities owed or loss of rent.

Background

The landlord testified that the month-to-month tenancy began in February 2005 and a copy of the tenancy agreement was submitted into evidence. The rent was $650.00 per month and a security deposit of $325.00 and "utility deposit" of $100.00 was paid.

At the outset of the hearing, the landlord discussed the tenancy terms including: tenant's obligation to complete a "check-in/ check-out" form; a restriction to occupancy for one adult; an obligation by the tenant to give prompt written notice of any defect/accident/ damage to the unit; a requirement to cooperate with the landlord in showing the unit to renters, the tenant's responsibility to pay for any damage caused by the tenant; the fact that no smoking was permitted in the unit; a specific instruction not to break the silicone seal around the tub/shower; agreement by the tenant to maintain the unit in a clean state "*according to the standards of a prudent owner*"; a requirement that the tenant must wipe down walls & ceilings with a mild fungicide solution at least every 6 months and whenever the slightest trace of mould first appears; instruction that the tenant not permit water to lay on the floors, not to use any picture hanger other than a wedge-type; that the tenant must give two full months notice prior to vacating; 2% interest on unpaid balances after 14 days and additional terms in the agreement relating to the calculation and payment of utilities. The landlord stated that the tenant had violated many of the tenancy terms.

The landlord had submitted into evidence a copy of a document titled, "Standard *Memorandum to Vacating Tenants*", initialed by the tenant at the beginning of the tenancy containing a list of expectations and tasks with the monetary amount to be charged for each deficiency at $20.00 per hour if present at the end of the tenancy.

Inadequate Notice

The landlord testified that the tenant had failed to comply with a term in the tenancy agreement requiring the tenant to give two full months of notice prior to ending the tenancy. The landlord was claiming a loss of rent of one month of $650.00 as the tenant had only given one month's written notice.

Evidence: Utility Claim

In regards to the utilities, the parties testified that electricity was billed by the landlord based on an internal meter measuring the hydro used for the portion of the building inhabited by the tenant. The fees were charged, "*in accordance with the rate in effect at B.C. Hydro*", with the landlord absorbing the tax. Other utilities including water, cable and heating were to be paid at 50% by the tenant. A utility deposit of $100.00 was paid by the tenant at the start of the tenancy and held in trust by the landlord.

The landlord submitted copies of several memorandums showing "*RE UTILITIES*" that had been typed up by the landlord and apparently given to the tenant during the course of the tenancy. Each of these documents showed the specific units used for the period in question and indicated charges as calculated by the landlord, along with detailed commentary on various topics at the bottom. The dates of these documents were: September 30, 2009, September 1, 2009; August 1, 2009; May 1, 2009; February 15, 2009; March 10, 2008; August 16, 2007; September 3, 2006; and May 1, 2005.

A memorandum dated September 30, 2009, indicated that the final utility bill was $98.52 along with arrears from the previous billing in the amount of $331.07 for a total amount owed of $429.59, less the $100.00 "deposit" paid at the start of the tenancy.

The landlord also submitted a copy of a two-page letter to the tenant dated September 14, 2009, titled, "*Without Prejudice Memorandum*" written by the landlord which discussed the landlord's position with concerns, proposals and instructions about various issues under dispute. No written response was received from the tenant.

There were no copies of the original utility bills from the actual providers in evidence. However, according to the landlord, the tenant had never questioned this arrangement nor the amounts. The landlord was seeking payment of $429.59 for the utilities owed at the end of the tenancy with credit to the tenant for the $100.00 paid as utility deposit.

The tenant testified that he had never seen the hydro bill from the utility company and although he had paid the landlord's invoices for the hydro, he did not agree with the amount of the utility arrears shown on the final notice from the landlord. The tenant pointed out that, in any case, he was not able to live in the unit during the final week of September 2009 as the landlord was conducting extensive renovations to the bathroom and other areas of the unit and the utilities for that period of time would not fall to the tenant.

Analysis: Utility Claim

Section 13(2)(f)(iv) of the Act states that a tenancy agreement must contain the agreed terms in respect of services and facilities are included in the rent. Section 46(6) of the Act states that utilities can be considered as unpaid rent for the purpose of issuing a Ten-Day Notice to end tenancy (6) If (a) a tenancy agreement requires the tenant to pay

utility charges to the landlord, and (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them. In this instance, I find that the tenancy agreement contained the following provision regarding electricity:

> *"The premises are totally self-contained. Tenant(s) shall pay the landlord for electricity consumed as measured by the internal consumption meter, in accordance with the rate in effect at B.C. Hydro, with the landlord absorbing the tax. Tenant(s) on commencement of tenancy will have an opportunity to view the meter and be satisfied with these arrangements designed chiefly to avoid controversy and conserve energy. In the event of a dispute of any kind about these arrangements, a flat fee of $50.00 per month will apply, which will then be payable in advance as additional rent.*"

The remainder of utilities, including water, cable and heating were to be shared 50/50. I find that the tenant had willingly accepted the invoices issued by the landlord and did not ask or obtain verification from the original invoices of utility providers nor did he monitor the internal or master electrical meter each month.

While I accept that the this manner for billing of utilities was used with success throughout this tenancy, I find that the tenant was now called the final charges into question. Under the Act, the fact a tenant willingly paid charges or fees imposed by the landlord does not render these charges as legitimate and does not bar the tenant from challenging them after-the-fact. Now that the amounts are under dispute, I find that the landlord is obligated to verify the accuracy and basis for the charges to the tenant and to the dispute resolution officer for the purpose of supporting the monetary claim. I find that reliance on invoices created by the landlord containing charges unilaterally calculated by the landlord, do not constitute proof that the amount was justified. I find that independent verification from source providers would have partially supported the costs. I find that the evidence is not sufficient to withstand a challenge by the tenant.

The term in the tenancy agreement which states that in the event of a dispute, the electrical utilities will revert to a flat rate of $50.00 per month payable in advance, would not be in compliance with the Act because section 14 of the Act states that a tenancy agreement may not be amended to change or remove a standard term and may only be amended to add, remove or change a term, other than a standard term, if both the landlord and tenant mutually agree in writing to the amendment. Moreover, changes in the amount of rent charged can only be implemented in strict accordance with section

42 of the Act. Under section 5 of the Act, parties are not at liberty to contract out of the Act and any attempt to do so will not be enforced. Given the above, I find that a term in a tenancy agreement that has the potential effect of increasing monthly rate to be paid is not in compliance with the Act and cannot be enforced even if the parties had agreed to the term in the contract.

I find that the landlord has not furnished sufficient support for the amount being claimed for utilities. Although the tenant stated that the amount would not exceed $100.00, I am not prepared to estimate how much is genuinely owed due to the lack of verifiable data. Therefore this portion of the landlord's application must be dismissed.

In regards to the "*utility deposit*" of $100.00 imposed by the landlord, I find that the landlord was not a permitted to charge this fee under sections 6 or 7 of the Residential Tenancy Regulation and was in violation of the Act by doing so. This deposit would be considered as part of the security deposit.

Analysis: Loss of Rent

In regards to the landlord's claim for loss for $650.00 loss of rent based on the fact that the tenant gave only one month notice in contravention of a term in the tenancy agreement which requires two months notice, I find that this claim inconsistent with the Act. Section 5 of the Act does not permit a landlord or a tenant to avoid or contract out of the Act and states that any attempt to do so is of no effect and section 6(3)(a) of the Act states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations. Section 45 of the Act states that a tenant has the right to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that: (a) is not earlier than one month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. I find that the tenant did not violate the Act and the term in the agreement is not enforceable. Therefore I find that the landlord is not entitled to any compensation for loss of rent and this portion of the landlord's application must be dismissed.

Evidence: Monetary Claim for Labour

The landlord was claiming compensation for the number of hours spent on cleaning and repairing the rental unit and testified that the tenant had made a commitment to work together but the tenant failed to keep the promise. The landlord indicated that the unit

needed to be prepared in advance for re-rental and when the tenant did not act to do the cleaning and repairs, by September 24, 2009, the landlord felt it necessary to step in so that the unit would be ready to re-rent. The landlord testified that the bathroom in particular required drastic repairs due to water damage directly caused by the tenant. Moreover, according to the landlord, the unit needed to be thoroughly cleaned and repainted because of the tenant smoking in the unit, neglecting to address mould and damaging the walls and cabinets.

The landlord stated that the tenant had signed the move-in report confirming that the unit was clean and in good repair when he moved in. The landlord testified that at the end of the tenancy, the tenant refused to cooperate in the move-out inspection scheduled for noon on September 30, 2009 and appeared a half an hour early, dropping off the keys and leaving. This was also witnessed by the landlord's associate. The landlord stated that the move-out inspection had to be completed in the tenant's absence. Copies of the inspection reports were in evidence and the landlord pointed out that these verified the extent of the cleaning/repair work that was necessary.

The tenant testified that that the unit was left in reasonably clean condition but that the work was limited by the fact that the landlord and others took over the unit from September 24, 2009 onwards prior to the end of the tenancy, cleaning, painting and renovating. The tenant testified that because the landlord started renovations and cleaning, while the tenant was still in legal possession, the tenant was deprived of the opportunity to do the job until the end of the date of vacancy. The tenant stated that he was actually forced to move out of the unit in the final week of his tenancy as he was unable to use the bathroom and could not properly clean-up due to the drywall dust, ongoing painting and equipment in the unit. The tenant testified that he had attempted to return at the end of the tenancy to do some final cleaning along with several friends to assist but found it impossible to proceed with the work because the landlord was on site being intrusive and argumentative. The tenant stated that he did appear for the final move-out inspection at the appointed time, but only dropped off the keys and his written forwarding address and left without participating in the move-out inspection due to the confrontational way the landlord was behaving towards him.

The landlord was claiming 86 hours for labour at a cost of $1,720.00, plus $100.00 for a trades person and $634.00 in materials. The landlord submitted a "*TIME SHEET*"

containing the hours of labour being claimed for specific tasks by date. These are discussed below:

Porch

On Wednesday September 23, 2009, the landlord testified that he cleaned the front and side porches and was claiming 2 hours of labour for this job.

The tenant disagreed with the charges on the basis that the landlord was, in fact, preparing to re-paint the porch area, which needed painting.

Bathroom

The landlord testified that on Thursday September 24, 2009, he spent 10 hours dismantling the tub sliding doors, removing damaged tub-surround, removing wet gyproc and nails & screws behind the surround, cleaning “black mould” and doing preparation work. On Friday September 25, according to the landlord, he spent 6 more hours assisting in installing new gyproc in the bathroom and this continued on September 26, for another 5 hours which included more drywall work, removing the medicine cabinet, toilet tank, fan, “HL”, lights and switch covers and spent time cleaning and disinfecting the walls, ceiling and vanity.

According to the landlord, the interior of the bath was in good usable condition at the start of the tenancy as evidenced by the move-in report initialed by the tenant. The landlord testified that the tub surround was professionally installed approximately 15 years ago over water-resistant drywall. The landlord pointed out that his own bath surround was installed at the same time and in the same manner and was fully intact with no problems whatsoever. The landlord testified that the extensive bathroom renovation in the unit was necessary solely due to the tenant’s damage to the bathroom and the tub-surround where there was a significant crack in the plastic that had been taped up by the tenant without reporting to the landlord as required under the tenancy agreement. The landlord submitted several photographs showing damage to the tub panel and also damage and mould on the drywall beneath. The landlord testified that the tenant also compromised the integrity of the joints where the silicone was placed and submitted photos of these areas after removal of the panel. The landlord stated that, although the original silicone joint was fairly wide, it was done properly and the landlord felt that it was water-tight. The landlord stated that the tenant’s

failure to report the crack, and his continued use of the shower allowed water to infuse the walls which caused wet drywall to mould and dissolve. The landlord's position was that the tenant had a clear responsibility under the agreement to report the damage so that it could be fixed before the damage worsened. The landlord testified that the tenant's actions resulted in a major restoration of the walls behind the tub and elsewhere in the bathroom that would otherwise have been unnecessary.

The tenant acknowledged that the tub-surround had cracked two months prior to the end of the tenancy and that he had neglected to report this incident to the landlord and had instead taped up the crack. The tenant testified that when the tenancy began, the tub surround was already beginning to show signs of wear and was loose in spots. The tenant added that the caulking around the joints was "horrible" and likely leaked. The tenant alleged that the plastic surround was not properly installed, pointing out that excessive spaces between the glue tracks shown on the drywall in the photographs was evidence of a faulty installation. The tenant stated that there was a period of ten years prior to his tenancy during which previous tenants had likely compromised the effectiveness of the panel. According to the tenant, the plastic tub-surround was nearing the end of its effectiveness through normal long-term wear and tear. The tenant disputed that he was responsible for the damage and took issue with the amount of time being claimed by the landlord for labour, which the tenant felt was exaggerated.

Cleaning and Painting Rental Unit

The landlord provided a daily accounting of work done by the landlord in the unit from Sunday September 27, 2009 until October 2, 2009. The landlord stated that the tenant's violation of the contract by smoking in the unit caused extra odour and residue that required deeper cleaning than normal and made a complete repainting necessary. As evidence, the landlord presented photos of the tenant's can of cigarette butts. The total hours of labour being claimed was 86.00 hours worth $1,720.00 plus $100.00 for the trade person and $634.00 in materials for a total of $2,504.00

The tenant testified that he had cleaned the unit to the best of his ability but was unable to do the final cleaning because of the landlord's insistence on being in the unit and doing the renovations and cleaning jobs by himself and others he

had hired. The tenant stated that he usually smoked outside, but admitted to smoking in the unit on rare occasions when the weather was bad but confined this activity to the opening for the fireplace. The tenant stated that although he was more than willing to clean the carpets and the unit, it was impossible to do with the renovations going on during what was to be the final week of his tenancy. In regards to the cost of painting, the tenant stated that the unit was not freshly painted when he moved in and this was a normal wear and tear issue for which the landlord would be responsible.

Other Damages

The landlord also alleged that the tenant had damaged an area beside the refrigerator by removing a spacer that protected the edge of the cabinets along the bottom, for which the landlord was claiming $100.00. The landlord testified that the tenant caused a burn along part of the cabinet beside the stove costing $25.00. Photos of the damaged areas in the kitchen were in evidence. The landlord was claiming $25.00 for the under-sized glass insert in the fireplace that was replaced by the tenant.

The tenant disputed the $100.00 damage to the cabinet adjacent to the refrigerator. The tenant stated that he was not aware of the spacer nor had he noticed any damage and he pointed out that the area in question could not be seen unless the refrigerator was pulled out. The tenant also disputed the $25.00 claimed for burn damage to the cabinet near the stove which the tenant felt was caused by radiant heat from the oven due to proximity. In regards to the glass insert, the tenant stated that this was taken to a qualified professional for repair.

The hearing had to end prior to the last few claims being presented and debated by the parties. Testimony on these items resumed when the hearing reconvened. At the hearing held on April 6, 2010, the landlord gave testimony and presented evidence on the cost of the materials to complete the drywall including $71.86 for drywall and drywall supplies, $6.88 for ceramic screws.

The landlord also submitted evidence to support reimbursement for $5.91 for toilet installation supplies which he testified were necessary in order to replace the drywall. The tenant disputed the need for this.

The landlord had given testimony and presented evidence to support claims for painting supplies and silicone that were part of the bathroom repairs and was also claiming the

$9.97 cost of a replacement smoke alarm as the alarm in the unit no longer functioned and the $10.07 cost of a replacement filter for the over-stove fan, as well as new weather stripping costing $20.74. The tenant did not agree with the claims.

Analysis: Monetary Claims

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 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, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and finally that the claimant made a reasonable attempt to mitigate the damage or losses that were incurred.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I

note that some guidance is provided in regards to the normal useful life expectancy of particular items in Residential Tenancy Policy Guideline 37.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the Act states 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, and give the landlord all the keys or other means of access.

In regards to the landlord's claim for repairs to the bathroom, I find as a fact that the tub panel was cracked by the tenant and this meets element one of the test for damages. However, to meet element two of the test, it must be determined whether or not this damage was due to normal wear and tear as alleged by the tenant. I accept the tenant's testimony that the bath tub panel was pulling loose in some areas but reject the allegation that the panel was not properly installed. In any case, the average useful life expectancy of plastic or composite tubs, showers and panel/enclosures is 10 to 15 years and I find it likely that the failure of the panel was due to normal wear and tear. I find that the tub surround replacement must be considered a maintenance issue.

In regards to the tenant's failure to report the tub-surround problem while continuing to use the shower causing additional damage to the drywall beneath, I find that this failure to report damage constituted a violation of the Act and the agreement and resulted in added expenditures for the landlord.

Presuming that the worn-out tub-surround panel could have been removed leaving the drywall intact, I find that the landlord is entitled to be compensated for the pro-rated value of drywall materials that would otherwise have been unnecessary. As the

average life expectancy of drywall is 20 years, I set the amount of entitlement at 25% of the materials purchased.

I accept the landlord's evidence on the cost of the materials to complete the drywall including $71.86 for drywall and drywall supplies, $6.88 for ceramic screws and find that the landlord is entitled to 25% of the cost amounting to $19.69.

In regards to the claim of $5.91 for toilet supplies based on having to remove and reinstall the toilet, I find that this expenditure does not sufficiently satisfy the test for damages and must be dismissed.

As for the labour costs, I find that a reasonable time for the labour in the drywall installation and finishing in the bathroom would be 8 hours and I therefore find that the landlord is entitled to $40.00 for 25% of the labour cost.

In regards to the claims for the purchase of silicone, a smoke alarm, a replacement filter for the range fan and weather stripping, I find that the tenant's liability for these expenses have not been sufficiently established.

In regards to the claim for the cleaning of the unit and the porch, I find that under section 37 the tenant is required to leave the rental unit in a reasonably clean condition at the end of the tenancy, which ended on September 30, 2009. However, I find that the landlord's claims for cleaning pertained to primarily to labour expended prior to the end of the tenancy, during which the tenant still had legal possession and before section 37 would have applied. I accept the tenant's testimony that, with the exception of some grime under the appliances, the unit was left reasonably clean or at least as clean as possible given the renovation activities. I accept the tenant's testimony that his efforts to do a more intensive clean-up had been thwarted by the actions of the landlord. Accordingly I find insufficient support in regards to the landlord's claim for cleaning costs against the tenant and I dismiss the portion of the application relating to this claim.

In regards to the claims related to the painting, given that the average longevity of interior paint is estimated to be 4 years, I find that the pro-rated value of the paint finish would be less than the cost. Accordingly the portion of the landlord's claim relating to compensation for time and materials for painting must be dismissed.

Other Damages

In regards to the alleged damage to the bottom of the cabinet, for which the landlord has claimed $100.00, I find that the fact that the refrigerator was situated close to the cabinet, in a location not particularly accessible to the tenant, and that there was no baseboard along the perimeter, would all support a finding of normal wear and tear. In regards to the $25.00 claimed for repairing the cabinet immediately adjacent to the oven which was damaged by heat, I find that this also would not be a matter within control of the tenant to prevent, given the location. In regards to the $25.00 cost of the undersized glass insert, I find that the landlord has failed to sufficiently prove the monetary loss. Accordingly, I find that the portion of the landlord's application regarding these damage claims must be dismissed.

In regards to the remainder of the landlord's monetary claims I find that the evidence and testimony given was insufficient to satisfy the test for damages.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of $59.69 comprised of $19.69 for the pro-rated value of the drywall supplies and a portion of the labour costs in the amount of $40.00. The landlord is entitled to retain the $59.69 from the tenant's security deposit and interest of $440.04 leaving a balance of $380.35 in favour of the tenant.

Conclusion

I hereby grant a monetary order to the tenant ordering the landlord to repay $380.35. This order must be served on the landlord and if unpaid, may be enforced through Small Claims Court .

The remainder of the landlord's application is dismissed without leave.

February 2010
Date of Interim Decision

April 2010
Date of Final Decision

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Dispute Resolution Officer