

## **Decision**

### **Dispute Codes:**

MNSD, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's \$900.00 security deposit for a monetary order for cleaning, repairs and paint touch-up.

Both parties appeared and gave testimony during the conference call.

### **Issue(s) to be Decided**

The landlord was seeking to retain the deposit and the issue to be determined is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss.

### **Background and Evidence**

The landlord testified that the tenancy began in September 1, 2010 and ended on April 30, 2011 with rent of \$1,800.00 per month and a security deposit of \$900.00. The landlord submitted into evidence copies of photos, invoices, estimates, and a tally of hours spent on the various tasks. The tenant submitted a copy of the move-in and move-out condition inspection reports.

The landlord testified that the parties participated in the move-out inspection and several deficiencies and damaged areas were pointed out to the tenant. The landlord also testified that the parties had agreed that any labour to clean the unit or rectify the damage would be charged at \$20.00 per hour. The landlord acknowledged that the tenant was not provided with the option of addressing the problems found.

The landlord is claiming 10.5 hours for cleaning plus another 2.5 hours to remove and replace mouldy grout from tile in the bathroom, that the landlord attributed to an ongoing failure to clean during the tenancy. The landlord pointed out that the photos verify that the refrigerator, oven and the inside of several cabinets were not fully cleaned and the

landlord offered verbal testimony that the floors, and fixtures were also not left in a reasonably clean state.

The tenant conceded that there were a few areas in the suite that still needed to be cleaned including the oven and some of the cabinets. The tenant acknowledged that part of the refrigerator was missed. However, the tenant disputed the landlord's claim that most of the other claimed areas were not clean and stated that the cleaning time should not have taken more than 7.5 hours.

The landlord testified that the paint finishes in the unit were around 4 and a half years old in most of the areas and had been touched up just prior to the tenancy, but the entry had recently been completely repainted

The landlord testified that the tenant had left an excessive number of holes in the walls, particularly in an area where the tenant had installed a dart board. This required significant patching, and touch-up painting that took approximately 8 hours and required \$61.25 worth of paint. The landlord referred to the receipt for paint purchased and the photos which showed areas where the holes were filled.

The tenant stated that the majority of the holes were pin-holes that could be considered as normal wear and tear. The tenant did acknowledge that the area around the dart boards went beyond the norm, but stated that the patching would not have required more than 2.5 hours valued at \$50.

The landlord stated that garbage was left requiring a trip to the dump and is claiming \$32.00, including the fee of \$12.00 charged by the landfill site. The landlord confirmed that the garbage taken away was only that of the tenant's, and not from other residents vacating the building.

The tenant stated that he did not realize that the garbage left would not be picked up in the regular cycle and had he been told this was the case, may have been able to make his own arrangements.

The landlord testified that the tenant left damage to the unit including a dent in the refrigerator which the landlord valued at \$200.00. The landlord referred to a photograph taken prior to the tenancy that showed a pristine surface on the refrigerator door and a second photo at the end of the tenancy showing that there was a dent in the door. The landlord pointed out that buying a new door would have cost \$600.00.

The tenant stated that he knew nothing about how or when the door was dented, and speculated that the dent may have pre-existed the tenancy.

The landlord testified that numerous punctures were evident in the surface of the laminate flooring around where the dartboard had been. The landlord had submitted three estimates for the floor repairs and was claiming \$168.00.

The tenant did not deny causing this damage, but felt that it was not sufficiently significant to warrant the cost for the repairs being claimed by the landlord.

Finally, the landlord pointed out that the total damages far exceed the amount of compensation being claimed and, in fact he had made every effort to keep the costs as low as possible and, moreover, did not account for all of the labour he contributed to restore the unit to the pre-tenancy condition.

### **Analysis**

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 tenant 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 the claimant took steps pursuant to section 7(2) of the Act minimize the loss.

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.

In regard to the claim for the cleaning costs, I find that 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.

I find it was proven that the oven, some of the cupboards and the refrigerator were not left in reasonably clean condition, as evidenced in the photographs. Beyond that, I find that the landlord relied on disputed verbal testimony with regard to cleaning of the bathrooms, floors and other areas. Therefore I find that the landlord is entitled to be reimbursed for 9 hours of cleaning valued at \$180.00.

With respect to the claimed costs for patching and painting I find that the walls did need to be filled in places and that the labour for this particular task of spackling and sanding would be 3 hours valued at \$60.00.

With respect to the re-painting, I find that 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 take into account the age of the damaged item and reduce the replacement cost to reflect the depreciation of the original value. In order to estimate depreciation of the replaced item, reference can be made to Residential Tenancy Policy Guideline 37 in order to accurately assess what the normal useful life of a particular item or finish in the home would be. I find that the average useful life of an interior paint finish has been set at 4 years, and the majority of this unit had originally been painted more than four years prior, with touch-up painting done as required to preserve the appearance. Given that most of the paint surfaces in the unit had exceeded their expected useful life, I find that the portion of the landlord's claim relating to the preparation and painting of the walls must be dismissed.

With respect to the time that the landlord expended in removing and replacing tile grout in the bathroom, I find that the landlord has not sufficiently satisfied element 2 of the test for damages in proving that the tenant failed to properly clean the area nor that this failure had caused the alleged mould or discoloration of the grout. For this reason the landlord's claim for compensation with respect to the tiles, must be dismissed.

With respect to the costs for disposal of garbage left by the tenant, I find that this claim satisfied all elements of the test for damages and the landlord is entitled to be compensated \$32.00 as claimed.

In regard to the dent in the refrigerator, I accept that it was damaged during the tenancy. However, I find that the marred surface affects the appearance, rather than the functionality of the appliance. I find that most appliances are vulnerable to the odd accident that eventually may scratch or dent them without any particular negligent conduct being perpetrated by its user. I also find that the landlord's assessment of value was not based on an actual monetary loss suffered by the landlord and must therefore be dismissed.

With respect to the damage to the floor, I find that the use of the area for a dart board, would require the tenant to have taken measures during the tenancy to protect the floor from punctures expected when using darts. I find that the damage caused by the tenant goes beyond normal wear and tear and I therefore find that the landlord is entitled to be compensated \$168.00.

Based on the evidence and the testimony, I find that the landlord is entitled to total compensation of \$490.00 comprised of \$180.00 for cleaning, \$60.00 for patching walls, \$32.00 for garbage disposal, \$168.00 to repair the floor damage and the \$50.00 cost of this application.

**Conclusion**

Based on the testimony and evidence I find that the landlord is entitled to retain \$490.00 from the tenant's security deposit of \$900.00 leaving a balance of \$410.00 as a credit to the tenant. I hereby grant a monetary order in the amount of \$410.00 to the tenant. This order must be served on the landlord and may be enforced in small claims court if necessary.

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

This decision is final and binding and 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: August 24, 2011.

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Residential Tenancy Branch