



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for painting, carpet cleaning and drapery cleaning and to keep the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim for the return of the security deposit, reimbursement for painting, moving costs and reimbursement for light fixtures. The landlord and the tenant both appeared.

Issue(s) to be Decided

The issues to be determined, based on the testimony and the evidence, is whether the landlord or the tenant are entitled to monetary compensation under section 67 of the *Act* for damages.

Background and Evidence

The tenancy began on March 1, 2011 for a one year fixed term. The rent was \$850.00 and a security deposit of \$425.00 was paid. The tenancy ended on November 30, 2011 when the tenant vacated, citing that the reason was the landlord's continuing failure to address a mould issue and safety concerns.

Submitted into evidence was a copy of the tenancy agreement, copies of communications between the parties and photographs of the unit. Also in evidence was a move-in and move-out condition inspection report.

Landlord's Application

The landlord testified that when the tenants moved in the paint was approximately 2 years old. However, the tenants had repainted the unit changing it from the original neutral tones to vivid colours. The landlord testified that, once the tenants moved out, repainting of several coats were necessary to restore the unit to the original colour. The landlord is claiming \$700.00 for the work and submitted verification of this expenditure. The landlord testified that the tenancy agreement also required that the tenants have the carpets and draperies professionally cleaned at the end of the tenancy and this was not done. The landlord is claiming \$140.00 for the carpet cleaning and submitted a

receipt proving that \$84.00 was paid to the contractor for this work. In addition, the landlord is claiming \$115.00 for cleaning the drapes and submitted an invoice for \$40.00 charged by the dry cleaners for cleaning and \$10.00 for repairs. The total claim by the landlord was \$955.00.

The tenants acknowledged that the tenancy agreement required them to professionally clean the drapes and carpets. However, they disputed the amounts claimed by the landlord for the carpet cleaning and the drapery dry cleaning. The tenant felt that they should only be held accountable for the actual amounts shown on the invoices.

With respect to the repainting, the tenant's position was that, at the start of the tenancy, they were told by the building manager that it was okay to paint and they did so at their own expense for the labour and supplies. The building manager was not present at the hearing to give testimony.

The tenant testified that the rental unit was enhanced by the painting. The tenant testified that, when the landlord informed them that they were required to restore the colour back to neutral tones prior to vacating, they had managed to find new tenants who agreed to accept the paint colours "as is". However, the landlord rejected these potential renters. The tenant does not agree with the landlord's claim for painting. The tenant testified that the fact they repainted and repaired the kitchen cabinets, which were definitely in need of painting, as confirmed in the move-in inspection report, should be considered in their favour as the landlord would have needed to address that deficiency if they had not taken on the job. The tenant also pointed out that the bathroom was in need of mould remediation and this would have involved repainting by the landlord as part of the process. .

Tenant's Application

The tenant is claiming compensation for their labour and expenses in painting of the kitchen cupboards, which they allege were in dire need of refurbishment when they took possession of the unit. The tenant stated that two people spent 40 hours disassembling, repairing and meticulously painting the cabinetry. In addition, the tenant incurred costs for the supplies. No receipts were in evidence. However, the tenant pointed out that the \$700.00 being claimed was reasonable for the labour alone.

The landlord disputed the above claim on the basis that the tenant did not make any request that the landlord repaint the cabinets and the tenants failed to obtain the landlord's approval for future reimbursement prior to doing the work. The landlord also pointed out that no receipts were provided to verify the costs.. The landlord acknowledged that the move-in inspection report did show that the kitchen cabinets needed to be painted. However, the expected course of action would be for the tenant

to put in a written request for the landlord to address this issue. The landlord stated that there are no in-house forms for this purpose, but tenants are at liberty to compose their own requests.

The tenants are also seeking reimbursement for light fixtures they purchased after getting permission to install them. The tenant testified that there was an expectation that, at the end of their tenancy before moving out, they would remove their purchased fixtures to take with them and restore the old fixtures. In the alternative the tenant felt they should be compensated for the costs of the new fixtures. However, according to the tenant, when they asked the landlord for the old fixtures so these could be re-installed, the landlord failed to give the old fixtures back and the tenants were forced to leave their new lighting still in place.

The landlord testified that he was not aware that the tenants had requested the old fixtures from the property manager and had just found out that this was the reason the tenants did not restore the original fixtures. The landlord stated that the tenants would be permitted to pick up their fixtures at a pre-arranged time if they wanted them back and he was willing to arrange a time for this..

The tenant's application included a claim for \$500.00 in compensation from the landlord for having to move due to a mould issue in the bathroom.

Analysis:

With respect 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.

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 regard to the landlord's claims for cleaning and repainting, 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. (my emphasis).

I find that the tenant did not clean the carpet or drapes and that the landlord is entitled to costs of \$84.00 for the carpet cleaning and \$40.00 for the drapery cleaning.

With respect to the landlord's claim for the cost of repainting the unit in neutral colours, I find that , awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position he or she would be in, had the damage not occurred.

Where an item, such as interior paint finish 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 to Residential Tenancy Policy Guideline 37 was made to accurately assess the normal useful life of a particular item or finish would be.

In this case, I find that the original paint finish was approximately 2 years old and that the average useful life for paint is 4 years. I find that the landlord's total costs would be reduced to \$350.00 based on the age of the paint. In addition, I find that the bathroom would have required some work by the landlord with respect to mould eradication, in any case,. Moreover, some of the wall repairs and painting that were completed by the tenant were necessary due to the condition of the unit when they moved in and I accept the tenant's testimony that the landlord benefitted from the work they did. .

With respect to the tenant's claim of \$700.00 in compensation for their costs of painting, I find that the new paint colours were not seen as an enhancement by the landlord and no evidence was submitted showing that the landlord had ever agreed to reimburse the tenant for the costs. That being said, I find that some of the tenant's painting, particularly in the kitchen was required when the tenant first took occupancy and the work done was evidently acceptable to the landlord. Given the above, I find that this was worth a credit in favour of the tenant of approximately \$200.00. Therefore, after deducting this amount from the \$350.00 costs incurred by the landlord, I find that the landlord would be entitled to be reimbursed \$150.00 for the repainting of the suite .

With respect to the tenant's claim for their moving costs of \$500.00, I find that the tenant violated the tenancy agreement by vacating before the expiry date of the contract. In

addition, before taking this action, the tenant failed to mitigate their losses by making an application for dispute resolution to obtain an order that the landlord comply with the Act. Therefore I find that the tenant's claim for moving costs fails the test for damages and must be dismissed.

Accordingly, I find that the landlord is entitled to total compensation of \$274.00, comprised of \$150.00 for the painting costs, \$84.00 for the carpet cleaning and \$40.00 for the drapery cleaning.

Finally, I find that the tenant is entitled to have their own light fixtures returned by the landlord. As the landlord has agreed to allow the tenant to pick up these light fixtures, no order is necessary. If the landlord fails to return this property, the tenant is at liberty to make another application seeking a monetary order for the value of the fixtures..

Conclusion

I order that the landlord retain \$274.00 from the tenant's \$425.00 security deposit in partial satisfaction of the claim, leaving \$151.00 refund still owed to the tenant.

I hereby issue a monetary order in favour of the tenant for \$151.00 for the remainder of the tenant's security deposit. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are dismissed without leave. Each party is responsible for their own application costs.

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: February 22, 2012.

Residential Tenancy Branch