



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit, for compensation for losses under the Act or the tenancy agreement, for unpaid rent, and for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that the Tenant was served with the Application and Notice of Hearing by registered mail sent on April 17, 2012, and deemed under the Act to be served five days later. Despite this the Tenant did not appear at the hearing. I find the Tenant was duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I note the Landlord has amended the original Application to request a monetary amount lower than the original Application.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on January 1, 2011, for an initial fixed term of one year to December 31, 2011, and then converted to a month to month tenancy. The monthly rent was \$975.00, payable on the first day of the month, and the Tenant paid the Landlord a security deposit of \$487.50 on or about January 1, 2011.

The Tenant gave the Landlord a written Notice to End Tenancy on February 28, 2012, to be effective on March 31, 2012. According to the testimony of the Agent for the Landlord the Tenant vacated the rental unit in the middle of March 2012.

The Landlord has incurred costs to clean and repair the rental unit due to the alleged condition it was left in by the Tenant.

The Landlord claims \$151.20 for carpet cleaning, and in evidence has provided an invoice which notes the carpet was extremely dirty.

In the amended Application, the Landlord also claims \$45.00 for drapery/blind cleaning, \$610.40 for painting and wall repair, \$175.00 for garbage removal, \$90.00 for general suite cleaning, \$25.00 for a light fixture and \$50.00 for the filing fee for the Application.

In support of the above claims the Landlord has provided invoices and receipts for the amounts paid.

The Agent for the Landlord testified that the Tenant was required to paint the walls at the end of the tenancy as part of the tenancy agreement.

The Agent also testified that the invoices and amounts paid indicate the Tenant did not clean the drapes or blinds, left behind personal property, broke a light fixture, and did not clean the entire rental unit before vacating.

The Landlord has also supplied an incoming condition inspection report with purchase order number references. The outgoing portion of the report is blank. The Agent for the Landlord testified that the Tenant did not attend the outgoing condition inspection report. The Agent testified that the outgoing condition inspection report was completed on a form entitled "Summary of Charges".

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Under section 37 of the Act, the Tenant is required to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear.

I find the Tenant breached section 37, when they failed to clean the carpets when they vacated the rental unit.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the Tenant is generally expected to clean the carpets if vacating after a tenancy of one year. Therefore, I allow the Landlord claims for carpet cleaning in the amount of \$151.20.

I dismiss all other claims of the Landlord without leave to reapply, for the following reasons.

In a claim for damage or loss under the Act or tenancy agreement, the Applicant making the claim (here the Landlord), must provide evidence sufficient to prove:

1. That the damage or loss exists;
2. That the damage or loss occurred due to the action or neglect of the respondent in breach of the Act or tenancy agreement;
3. Verification that the amount claimed for the damage or loss is the actual amount required for compensation; and
4. That the Applicant mitigated, or minimized, the loss or damage in accordance with section 7 of the Act.

In this instance I find the Landlord has provided insufficient evidence to prove the Tenant had caused damage or loss, or has breached the Act or tenancy agreement. The fact the Landlord spent money on the rental unit following the Tenant leaving is not evidence to support the submissions that the Tenant is responsible for reimbursing the Landlord for these costs.

For example, the Policy Guidelines to the Act for painting and wall repair set out the following:

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Based on the above, in order to prove a claim for wall repairs and painting the Landlord would have to provide sufficient evidence of damages being done to the walls by the Tenant, requiring the walls to be repaired and repainted at the Tenant's expense.

Here the Landlord had no evidence of what the Tenant had allegedly done to the walls, such as photographs, or a statement from the painter or other repair person verifying and explaining the damage to the walls. For **example**, if the Tenant's children had used felt pen markers to draw on the walls (which was not claimed), some evidence of this should have been submitted.

Furthermore, if there was a clause in the tenancy agreement requiring the Tenant to paint the rental unit when vacating, it would most likely be found to be an attempt to contract outside of the legislation, which is prohibited under section 5 of the Act.

I also find the Landlord had insufficient evidence to prove that the Tenant left behind garbage for removal, or damaged a light fixture, or failed to completely clean the rental unit, or to clean the window coverings.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$175.00** comprised of the carpet cleaning at \$151.20 and \$23.80 towards the fee paid for this application. I have reduced the filing fee awarded as the Landlord had limited success with the claim.

I order that the Landlord retain \$175.00 from the deposit in full satisfaction of the claim and I order the Landlord to return to the Tenant the balance due of **\$312.50**.

The Tenant is issued a monetary order for this amount. This order must be served on the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 12, 2012.

Residential Tenancy Branch