



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIONS COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep all or part of the security and pet damage deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and, to recover the filing fee from the Tenant for the cost of the Application.

An agent for the Landlord (the “Landlord”) and the Tenant appeared for the hearing and no issues were raised by any of the parties in relation to the service of the hearing documents and evidence in accordance with the Act and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damage or loss under the Act, regulation and tenancy agreement?
- Is the Landlord entitled to keep the Tenant’s security deposit in partial satisfaction of the Landlord’s claim?

Background and Evidence

Both parties agreed that this tenancy started on September 1, 2007 for a fixed term of two years after which the tenancy reverted to a month to month basis. A written tenancy agreement was completed and the Tenant paid the Landlord a security deposit in the amount of \$2,250.00 on September 1, 2007, which the Landlord still retains.

The Tenant vacated the rental unit on December 31, 2013. Before the tenancy ended, rent was payable by the Tenant to the Landlord in the amount of \$4,693.50 which was due on the first day of each month.

At the start of the tenancy the Landlord and Tenant completed a move in condition inspection report on August 29, 2007 and a move out condition inspection report on December 30, 2014, both of which were provided as evidence for this hearing. The Tenant provided the Landlord with his forwarding address in writing on December 30, 2013.

The Landlord testified that his claim relates to damages caused by the Tenant to the rental suite for which he now makes a total claim of \$2,382.89. This claim comprises of the following amounts supported by the following evidence.

- **\$577.71 for the repair and drape cleaning for all the drapes inside the rental unit.**

The Landlord testified that the Tenant had failed to clean and repair the drapes inside the rental suite. The Landlord drew my attention to the move in condition inspection report where the Landlord notes in the 'Drapes' section of the report that they required cleaning. The Landlord provided an invoice which documents that some of the drapes were water stained and soiled and had weak threads and pulleys which were repaired.

The Tenant testified that he had agreed with the Landlord during the move out inspection that the drapes would need cleaning but he did not realize that it would cost so much. The Tenant submitted that the Landlord could have cleaned these by hand as he did at the start of the tenancy. The Landlord rebutted this statement, submitting that he cleaned a different type of drape by hand at the start of the tenancy but the ones that were cleaned and repaired could not be done by hand and needed to be professionally cleaned.

- **\$1,601.25 for paint work to restore the original condition of the bedroom.**

The Landlord testified that the Tenant was given permission to paint one of the bedrooms in a color of his choice on the basis that this was returned to the original color at the end of the tenancy. This was recorded in writing and the Landlord pointed me to the move in condition inspection report and the written tenancy agreement which contained the following clauses respectively:

“Second bedroom has been painted in a custom color by tenant. Tenant will professionally return the entire room back to cloud white. Closet doors and California shutters will be sprayed off in oil paint”

“Painting, papering and decorating shall only be done with the prior written consent of the landlord”

[Reproduced as written.]

The Landlord testified that at the end of the tenancy the Tenant had failed to return the bedroom to the original colors. The Landlord testified that at no point did he give the Tenant verbal or written permission to keep the Tenant's color.

The Landlord provided two documents in support of the cost for repainting the bedroom. The first quote presented was a formal invoice in the amount of \$446.25. The Landlord testified that the California blinds and louvered shutters had to be removed and sent away for spray painting as this could not be done in situ. The Landlord then presented a hand written quote from a painter who writes that the cost of repainting the walls, the wood trim, crown moldings and the heat registers, cost \$1,155.00; however, the date on this quote is written as January 18, 2012.

The Tenant admitted to the changes in bedroom color he had made as testified to by the Landlord but submitted that the Landlord gave him verbal permission to leave the colors on the walls at the end of the tenancy. The Tenant submitted that the cost of the painting was excessive and the second invoice was handwritten and provided in 2012 and was therefore inaccurate and unreliable. The Landlord was unaware of this error on the quote and testified that it was a clerical mistake and should be read as 2014 and not 2012.

The Landlord submitted that it took a long time to remove the peach color on the walls and the peach color on the wood trims which the Tenant had painted. The Landlord provided a number of photographs showing the color the Tenant had painted in the bedroom. The Tenant submitted that he had lived in the suite for 6.5 years and therefore this was reasonable wear and tear and that the Landlord would have had to paint the bedroom after such a long period of time in any case.

- **\$203.93 for repair of the ceilings as a result of track lighting installation and removal, and three missing light bulbs which the Tenant had not replaced at the end of the tenancy.**

The Landlord testified that the Tenant had removed the lighting in the hallway and had installed track lighting from the hallway into the living room; when the tenancy ended the Tenant removed the track lighting but failed to repair the holes left in the ceiling which the Landlord had to repair at a cost of \$159.60. In addition, the Landlord claims \$44.33 for the replacement cost of three light bulbs which the Tenant failed to replace at the end of the tenancy. The Landlord did not document any of these damages on the move out condition inspection report and relies on his invoices and receipts as evidence of this damage.

The Tenant testified that he had patched and filled in the holes caused by the removal of his track lighting system at the end of the tenancy and denies the damage claimed by the Landlord.

The Tenant admitted to the fact that he had not replaced the three light bulbs being claimed by the Landlord at the end of the tenancy but submitted that the Landlord's claim for light bulbs was excessive as he had replaced the same bulbs the Landlord was claiming for in the amount of \$1.75 each during the tenancy.

Analysis

Firstly I find that the Landlord made the Application to keep the Tenant's security deposit within the time limits stipulated by Section 38(1) of the Act.

In my analysis of the evidence presented by the parties during this hearing, I have considered the following provisions and I have based my findings on the evidence as a whole on the balance of probabilities, rather than focusing on one particular aspect of the evidence.

- A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:
 1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

- Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.
- Section 37(2) of the Act requires a Tenant to leave a rental suite at the end of the tenancy reasonably clean and undamaged except for reasonable wear and tear.
- Policy Guideline 1 to the Act details the responsibility of both the Landlords and Tenants for residential premises. In relation to changes to the rental unit, the guideline explains that if the Tenant does not return the rental unit to the original condition before vacating, the Landlord may return the rental suite to the original condition and claim the costs against the Tenant.
- In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

By using the above provisions I have made the following determination of the Landlord's monetary claim for damages as follows:

In relation to the cleaning costs of the drapes, I find that the Landlord is entitled to these costs in the amount of **\$577.71** claimed. The condition inspection report shows that the drapes were clean at the start of the tenancy and required cleaning at the end of the tenancy. I also find that the invoice provided by the Landlord for this portion of the claim

shows sufficient evidence of the repair and cleaning that was required, and I find that this justifies the overall cost, even though this was claimed by the Tenant to be excessive.

In relation to the painting costs of the bedroom claimed by the Landlord, I find that the Tenant did not restore the original condition of the bedroom as required by Policy Guideline 1 and by the clause in the condition inspection report which specifically required the Tenant to return the bedroom to the original color and condition. I find that the Tenant's claim that the Landlord verbally gave him permission not to restore the colors is not proven and I find that the Tenant is liable for costs associated with this breach.

In determining the amount to be awarded to the Landlord I accept that, based on the formal invoice provided by the Landlord, the California blinds had to be removed and spray painted for a cost of **\$446.25** which I subsequently award to the Landlord.

However, I find that there are discrepancies in the hand written quote provided by the Landlord for the cost of repainting the bedroom in the amount of \$1,155.00 and that the painter who provided this quote was not made available for cross examination on the work that was performed for this hearing. I accept the submission of the Tenant that this cost is excessive. However, I do find that the Tenant is liable for the costs of restoring the bedroom to the original colors and accept the submission of the Landlord that this required a lot of time and effort to complete. As a result, I have determined that an appropriate amount to be awarded to the Landlord is 60% of the costs claimed in the amount of **\$693.00**.

I dismiss the Landlord's claim for costs associated with repairing the track lighting damage because the Landlord relies solely on the invoice as evidence for this claim. There is no indication of this damage on the move out condition inspection report, no photographic evidence and the Tenant denies this damage. Therefore, I find that the Landlord has failed to meet the burden of proof in this respect.

This also applies to the Landlord's claim for the missing light bulbs where the Landlord solely relies on a receipt which simply shows the costs of three lights bulbs and is not sufficient evidence for me to award this amount to the Landlord. However, the Tenant submitted that he did not replace the three light bulbs at the end of the tenancy and therefore, I find that the Landlord is awarded \$1.75 each for the light bulbs, which the Tenant testified he had paid for similar light bulbs during the tenancy, for a total amount of **\$5.25**.

As the Landlord has been successful in the majority of his claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,772.21**.

The Landlord holds a \$2,250.00 security deposit which was paid by the Tenant on September 1, 2007. The interest payable by the Landlord on this amount until the tenancy ended on December 31, 2013 was calculated using the Deposit Interest Rate calculator on the Residential Tenancy Branch website, as \$45.20 for a total amount of \$2,295.20.

Conclusion

As the Landlord already holds a total amount of \$2,295.20 in the form of the Tenant's security deposit, I order the Landlord to retain \$1,772.21 from this amount in full satisfaction of the Landlord's Application, pursuant to Section 38(4) (b) of the Act.

As a result, the Landlord will return the balance of the Tenant's security deposit after making the above deduction, in the amount of **\$522.99**.

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: April 25, 2014

Residential Tenancy Branch

