

DECISION

Dispute Codes MNSD, MND, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$350.00 for damages, \$50.00 for the filing fee paid for the dispute resolution application, and a request for an order allowing the applicant to retain the security deposit towards this claim.

Background and Evidence

The applicant testified that:

- The tenants caused numerous scratches in the hand railing at the rental property and as a result the landlord has to have the hand railing professionally repaired at a cost of \$241.50.
- The tenants admitted to scratching the hand railing and offered to use touch up paint, however since this is a powder coated railing, touch up paint would not do a proper job.
- A move-in inspection report was not done at the beginning of the tenancy, however they were the first tenants in the rental unit and there was no damage to the railing prior to them moving in.

The applicant is therefore requesting a reduced claim as follows

Professionally paint railing	\$241.50
Total	\$291.50

The applicant also requests that she be allowed to retain \$291.50 of the security deposit to cover this claim.

The respondent's testified that:

- They did not caused numerous scratches in the hand railing at the rental property; they only caused one small scratch approximately 1/2" wide.
- They did not cause all the other scratches claimed by the landlord.
- They were not the first tenants to stay in the rental property, as the landlord had rented it out seasonally prior to them moving in.
- They did offer to use touch up paint on the one small scratch they did cause as they were told by the railing company that this would suffice and that they often use touch up paint themselves to fix scratches that occur when installing railings.
- They also believe that the scratch that they did cause does not exceed normal wear and tear.

The respondent's therefore requested that this application be dismissed in full and that their security deposit be returned.

Analysis

It is my decision that the landlords have not met the burden of proving the claim against the tenants. No move-in inspection report was done nor was a proper move-out inspection report done, and therefore it is basically just the landlords word against that of the tenants. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

In this case the tenants have only admitted to causing one small scratch, and are denying causing any other damage and since one small scratch during a tenancy can easily be considered normal wear and tear, I will not allow the landlords claim for repairs.

Conclusion

This application is dismissed in full without leave to reapply and I have issued an order for the landlord to return the full security deposit of \$420.00 to the tenants.

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: May 20, 2010.

Dispute Resolution Officer