



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Landlord requesting monetary orders for compensation under the Act or tenancy agreement and for alleged damages to the rental unit.

Both parties appeared, gave 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 all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in early 2007, with the Tenant paying the Landlord a security deposit of \$1,450.00 on February 1, 2007. The parties agreed they had entered into a written tenancy agreement, however, no copy was provided in evidence. The Tenant and her family vacated the rental unit on June 30, 2010.

The Landlord filed her Application on July 5, 2010.

The Landlord is claiming \$50.00 to re-seed a portion of the lawn, where the Tenant had put a small swimming pool for her children. During the course of the hearing, the Tenant agreed to pay this amount.

The Landlord is claiming \$180.00 to repair a broken window latch at the rental unit. During the course of the hearing the Tenant agreed to pay this amount.

The Landlord is claiming \$150.00 to repaint a portion of the back siding of the house. The Landlord alleges the Tenant had a bar-b-que too close to the wall or in the alternative, that the Tenant placed a potted plant in front of a dryer vent, either of which caused the paint above the vent to peel and flake. In evidence for this claim, both parties submitted photographs of the subject wall.

The Tenant refutes the Landlord's claim on the painted siding, and testified she did not have her bar-b-que in front of the vent, nor did she have a potted plant blocking the vent. The Tenant claims the Landlord failed to have the dryer vents cleaned and that this might have caused the damage to the paint.

The Landlord is claiming \$290.00 for touch up painting of the walls and an overhang in the rental unit. The Landlord claims the Tenant left "dime sized" holes in the walls and only filled them, but did not repaint these. The Landlord further claims the Tenant damaged an overhang when moving furniture down the stairs. The Landlord testified that packing tape had been put over this area, and when removed, damaged the paint even more.

The Tenant testified that she asked the Landlord for paint to touch up the nail holes she had filled, used to hold her pictures up in the rental unit. The Tenant testified that the Landlord informed her about some touch up paint in the rental unit which could be used for this purpose. When the Tenant went to use the paint, she found the paint had gone bad and could not be used. The Tenant denied these nail holes were all "dime sized". She further testified she did not have the paint codes to purchase more paint.

The Landlord also claims for damages to the hardwood floors in the amount of \$1,451.52. The Landlord testified that the hardwood floors were in good condition when the tenancy began and that at the end of the tenancy the floors were damaged with scratches. In evidence the Landlord supplied pictures of the floors taken before the tenancy began and at the end. The latter photographs show deep scratches, with back and forth or side to side patterns. The Landlord claims for the cost of refinishing the floors, not to replace them.

The Tenant testified that at the start of the tenancy she had put pads under the furniture. She further testified that her children did move furniture around and that the pads might have worn out, or come off. She testified that the scratches were normal wear and tear, and that the rental unit was used as a home and not a museum.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement, by failing to make repairs prior to the end of the tenancy. The Tenant is required under section 32 to make repairs to the rental unit that are caused by the actions of the Tenant, or a person allowed on the property by the Tenant, which includes her children. Therefore, I find the Landlord is entitled to portions of the claims made, as described below.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations, here the Landlord has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

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 the Tenant must pay the Landlord **\$50.00** to re-seed the lawn and **\$180.00** to repair a broken window latch at the rental unit, as agreed to by the Tenant in the hearing.

As to the claim of \$150.00 to repaint a portion of the back siding of the house, I find the Landlord had insufficient evidence to prove this problem was caused by the Tenant. While it may have been heat coming from the dryer vent, this is something the Landlord is responsible for, as it was installed just above the top of the deck prior to the tenancy. It could also be just as likely the paint in this area was not properly applied, or for some other reason. Regardless, I find the Landlord failed to prove on a balance of probabilities that the Tenant breached the tenancy agreement in this instance or was responsible for the damage.

As to the claim for \$290.00 for touch up painting of the walls and an overhang in the rental unit, I award the Landlord **\$145.00** or 50% of this amount, to repair and touch up the overhang which was damaged by the Tenant. The holes left by the Tenant for her

pictures are normal wear and tear, and the Tenant was not required to re-paint these, and this is why I have reduced this portion of the claim.

As to the claims for damages to the hardwood floors in the amount of \$1,451.52, I find that the scratches to the floor go beyond normal wear and tear. The patterns of the scratches appear to be caused by repetitive motions, likely caused by back and forth movement of furniture, possible with someone adding weight to the furniture. It may be the pads were worn out, or that the children were jumping on the bed or other furniture.

While I do not find this is an instance of the Tenant doing intentional damage, I do find it was caused by the Tenant or her children, and therefore I allow the Landlord approximately 75% of this claim, or **\$1,089.00**. I have reduced this portion of the claim to allow for the partial depreciation of the floors and to account for some wear and tear which is allowed. Nevertheless, many of these scratches go beyond normal wear and tear, and that is why I find the Tenant is liable to pay a portion of the re-finishing.

I find that the Landlord has established a total monetary claim of **\$1,514.00** comprised of the above described awards and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$1,491.95** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$22.05**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 09, 2010.

Dispute Resolution Officer