



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit, and money owed in compensation for damage and loss, as well as to retain the security deposit in partial satisfaction of the monetary claims. The application is inclusive of recovery of the filing fee.

Both parties participated in the hearing with their submissions, document evidence and sworn testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damage and loss?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started March 01, 2007 and ended June 30, 2010. Rent was in the amount of \$830 per month. At the outset of the tenancy the landlord collected a security deposit of \$390, and a refundable fee of \$10 for a laundry access card. At the start of the tenancy the parties did not conduct a mutual move in inspection. At the end of the tenancy the parties conducted a cursory inspection and the landlord then conducted a second inspection on their own. I do not have benefit of any report into evidence in respect to any of the purported inspections.

The tenant does not dispute a portion of the landlord's claims – specifically:

Bathtub chip	= \$20
Wall repair / faceplates	= \$40

The landlord is claiming that the tenant caused damage to the rental unit driveway in the form of 2 oil stains in the driveway, approximately 1.5 square feet each, and 1 oil stain approximately 8 square inches. The landlord is also claiming cleaning costs totalling \$70, painting of \$50, and replacement of a laundry 'smart card' purported to be split at one end of the card - \$10.

The landlord claims that the tenant is wholly responsible for the remediation to the asphalt driveway as it was caused by his vehicle. The landlord provided photographs of the purported damage before and after the repairs conducted in August 2010. The landlord also provided an invoice for the repairs in the amount of \$884.80, from which the landlord is only claiming \$840. The tenant acknowledges that he likely added to the oil stain damage which existed when he moved in, but is not entirely responsible for its total cost of repairs. The landlord provided an invoice for a driveway renovation five (5) years earlier.

The landlord claims the tenant left the rental unit clean, but not clean to the standard of the landlord – and not “reasonably clean”. The tenant claims that he, along with help, left the unit “spotless”.

The landlord claims that the tenant repainted over some dark painted wall back to a neutral colour, but that the tenant's work left the wall in need of another coat of paint. The tenant testified that he is a painter, and that his work was done to a proper standard and that another coat of paint was not required, and that if the landlord indeed repainted it, it was not of benefit.

The landlord claims that the tenant damaged the laundry smart card (plastic) and that they had to pay \$10 to replace it. The tenant testified that the card was already mitigated when he received it 3 years ago, but did not notify the landlord as it still functioned as it should. He acknowledges that the card simply deteriorated through wear and tear; and, that in retrospect, he should have made an issue of the card's condition at the outset of the tenancy.

Analysis

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,

2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable. The tenant is not responsible for reasonable wear and tear.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In concert with the testimony of the landlord and the tenant, I find that the landlord is entitled to costs for a bathtub chip and repairs to a wall in the sum of **\$60**.

The landlord relies on their determination that the tenant caused the purported damage to the driveway. In the absence of a condition inspection report addressing the condition of the driveway at the start of the tenancy, the landlord has not met the test establishing that the tenant is fully responsible for the full value of the repairs, especially since the driveway renovations were already 2 years old when the tenant moved in. I accept the tenant's testimony that the driveway surface was already mitigated by some oil staining when he moved in and that he likely added to existing damage. Therefore, I find the landlord is entitled to a portion of the repair costs, and I set that amount at 40% of the actual cost of repairs, or **\$353.92**.

The landlord has not provided evidence or met the test in support of cleaning costs. Therefore, **I dismiss** this portion of the landlord's claim without leave to reapply.

The landlord has not provided evidence or met the test in support of painting costs. I further prefer the tenant's testimony in respect to this claim. As a result, **I dismiss** this portion of the landlord's claim without leave to reapply.

The landlord has the burden of proof. In the absence of proof to the contrary, I accept the tenant's testimony that the laundry access card suffered from a combination of prior damage to the card, and reasonable wear and tear. As a result, **I dismiss** this portion of the landlord's claim without leave to reapply.

As the landlord was at least partially successful in their claim, I grant the landlord recovery of the filing fee in the amount of **\$50**.

The landlord's award is the sum of **\$463.92**. The security deposit and the laundry access card refundable fee will be off-set from the award made herein.

Calculation for Monetary Order

Driveway damage repairs	\$353.92
Wall repairs, bathtub chip	\$60.00
Filing Fees for the cost of this application	50.00
Less Security Deposit, interest (\$10.82) and access card refundable deposit (\$10)	-410.82
Total Monetary Award	\$53.10

Conclusion

I order that the landlord retain the **deposit** and interest and laundry access card refundable fee of \$410.82 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$53.10**. If necessary, this order may be filed in the Small Claims Court 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*.
