



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord for a monetary order under the *Residential Tenancy Act* (the Act) for damage to the rental unit, or property. The application is inclusive of a request to retain the security deposit in partial satisfaction of their monetary claim and to recover the filing fee.

Both parties participated in the hearing with their submissions, relevant 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?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started December 01, 2010 and has since ended. At the start of the tenancy the landlord collected a security deposit from the tenant in the amount of \$510 which the landlord retains.

The parties agree the tenant caused damage to an exterior retaining stone wall, which the tenant testified occurred when they accidentally backed into the wall with a motor vehicle. The tenant does not dispute they caused the damage and agree they should pay for its repair.

The landlord is claiming the cost they incurred for repair to the wall. The tenant is disputing the amount they should pay for the repair – claiming the landlord's quote and cost for the repair is not reasonable. The landlord provided their evidence of the damaged wall, photographs, a quote from a contractor for the repair at \$1500, and payment confirmation for the repair as per the estimate. The tenant testified they were informed by tradesmen that it could be achieved for considerably less, at \$600.

The tenant claims they took immediate responsibility for the damage and took steps to enact repairs as soon as practical. The tenant testified that soon after the damage occurred, they consulted with the person they believed to be a bona fide representative of the landlord (subsequently identified as the landlord's maintenance man). The

maintenance man communicated with the foreman of the landlord's contractor, while they were conducting work on the property and obtained a verbal estimate for repairing the wall, at \$600. The tenant testified they agreed to the cost of \$600 and were told the repairs could be done in several weeks.

The applicant's representative testified their office did not become aware of the damaged wall until several months later and subsequently obtained a written quote from their preferred contractor which was considerably more. Disagreement ensued between the parties about the difference in the tenant's financial obligation. The landlord provided a quote from the contractor stating their amount itemized all which could be incurred during the repairs. The landlord claims they did not obtain other competing quotes for the work because a different contractor would result in additional costs. The landlord further testified that they do not permit tenants to arrange for repairs on their property. All work to their property must go through the landlord for reasons of due diligence.

Analysis

I have carefully considered and reflected upon all evidence advanced by the parties, whether or not articulated in this decision. On preponderance of all the relevant evidence in this matter, and on the balance of probabilities, I have reached a decision.

Section 32 of the Act, in part, states as follows:

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Residential Tenancy Regulation Schedule, in part, state as follows: (emphasis mine)

Repairs

8 (2) Tenant's obligations:

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

In this case, there is no dispute the tenant caused the wall damage. I find the Act clearly states the tenant is responsible for any damage they cause. I find the Regulations clearly state the tenant must take the necessary steps to repair damage to the residential property caused by their actions, and both statutes state the tenant is not responsible for reasonable wear and tear. I find that the tenant took the necessary steps to advance repairs and payment for damage caused by their actions and complied with their obligations within a reasonable time. I find the landlord intervened to enact the repairs for their reasons. And, I find the evidence of both parties equally compelling that the wall damage was repairable for either quote respectively obtained. I find the tenant has provided one quote of \$600 and the landlord provided a quote for \$1500 as the other, and that this hearing did not have benefit of other quote amounts.

Given the tenant's evidence they obtained a quote representing less than half the landlord's claim, I find that the landlord's claim, standing alone without comparison or competing estimate, on balance of probabilities, is extravagant. As a result, I fix the landlord's award for their claim at the mid-point between the only quotes provided in this matter, at **\$1050**, without leave to reapply. The landlord is allowed recovery of their filing fee in the amount of **\$50**, for a total award of **\$1100**. The security deposit being held by the landlord will be off-set from the award made herein.

Calculation for Monetary Order

cost for damage to retaining wall	\$1050.00
Less Security Deposit	-510.00
Total Monetary Award to landlord	\$590.00

Conclusion

I Order that the landlord retain the security deposit of \$510 in partial satisfaction of the claim and I grant the landlord a Monetary Order under Section 67 of the Act for the balance due of **\$590**. The landlord agreed to payments by instalments; however, 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*.

Dated: February 02, 2012

Residential Tenancy Branch