



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application for authorization to retain all or part of the tenants' security deposit and compensation for damage and cleaning. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The application was amended to correct the spelling of the name of one of tenants, as it appears on the tenancy agreement.

Issue(s) to be Decided

Has the landlord established an entitlement to receive compensation for damage and cleaning, and if so, what is the amount recoverable?

Has the landlord established an entitlement to recover hydro and gas costs from the tenants?

Background and Evidence

The parties provided the following undisputed evidence. The tenants were provided possession of the rental unit August 21, 2011 and vacated the rental unit August 31, 2012. The tenants paid a total of \$750.00 to the landlord as a security deposit. The tenants were required to pay the landlord one-half of hydro and gas costs.

It was also undisputed that on August 21, 2011 the tenants participated in a move-in inspection and signed report with the landlord's agent. On August 31, 2012 the landlord and tenants participated in a move-out inspection with the landlord but the tenants refused to sign the inspection report as they did not agree with the landlord's assessment.

The tenants provided a forwarding address to the landlord on or about September 11, 2012. The landlord refunded \$164.25 to the tenants and filed this application the following day. The landlord did not prepare a detailed monetary claim but submitted receipts for the following items:

Hydro bill of August 21, 2012 (50%)	\$ 21.87
Gas bill pro-rated to Sep 1, 2012 (50%)	29.28
Cleaning	112.00
New smoke detector and battery	38.06
Painting of living room and bedroom	<u>336.00</u>
Total claim	\$ 537.21

The tenants agreed with paying for hydro, gas and cleaning costs, as claimed. The tenants disputed the claims for a new smoke detector and painting costs.

Smoke detector

The landlord submitted that a new smoke detector was installed just before the tenancy commenced. At the end of the tenancy the smoke detector left in the rental unit, disconnected from the ceiling. The landlord purchased a new battery and determined that the smoke detector was damaged. The landlord purchased a new smoke detector and battery at a cost of \$38.06 and seeking to recover this amount from the tenants.

The tenants submitted that the smoke detector was very sensitive and they disconnected it. They were of the position that it was still working but that it needed a new battery.

Painting

The landlord submitted that the tenants left an excessive number of patched holes in the walls and that they painted over the patches with old paint given to the tenants by the landlord as sample paint only. The tenants were supposed to purchase new paint using the old paint sample. However, the tenants used the old paint which did not match the paint on the walls and, as a result, the living room and one of the bedrooms had to be repainted. The landlord submitted that prior to the tenancy there were only a couple of holes and stains on the walls but that there were many more at the end of the tenancy.

The landlord was uncertain when the walls were last painted as he purchased the property approximately one year ago and the landlord did not paint the walls before the tenancy commenced. However, the landlord submitted the walls and paint were in good condition at the beginning of the tenancy.

The tenants pointed out that the landlord was not present at the time of the move-in inspection and that it was done by the landlord's agent at the time.

The tenants submitted that the landlord provided them with paint to cover patch marks of small holes. The tenants took the old paint to the paint store learned that it just needed to be stirred. The tenants stirred the old paint and used it to cover the patches.

The tenants further submitted that there were holes in the walls living room walls when they moved in and that the bedroom had been touched up by someone before them using the same paint given to them by the landlord. The tenants denied that they hung an excessive number of pictures, claiming that they had approximately four pictures hung on the living room walls and approximately two pictures hung in each of the bedrooms.

Since the living room and kitchen are essentially one room the tenants submitted that the landlord would have had the kitchen painted too.

Analysis

As the landlord is the applicant in this case, the landlord bears the burden to prove an entitlement to the amounts he is claiming. The burden of proof is based upon the balance of probabilities.

Since the tenants have agreed to compensate the landlord for the hydro, gas and cleaning costs as claimed, I award those amounts to the landlord. I provide the following findings and reasons with respect to the two remaining items under dispute.

Under the Act, a tenant is responsible for paying for damage they caused. The Act further provides that normal wear and tear does not constitute damage. Further, awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Act and Regulations is the best evidence of the condition of a rental unit unless there is a preponderance of evidence to the contrary. I have accepted the move-in inspection report as evidence of the condition of the rental

unit when the tenants took possession as it was signed by both the landlord's agent and the tenants.

Since the tenants disagreed with the landlord's assessment of the unit at the end of the tenancy I have considered the parties testimony, photographs and other forms of evidence to determine the condition of the rental unit at the end of the tenancy.

Smoke detector

Based upon the undisputed testimony I am satisfied the tenants had a working smoke detector at the beginning of the tenancy. The landlord has also substantiated that he had to purchase a new smoke detector for the unit after the tenancy ended. Although fixtures and appliances may break down from time to time, I heard the tenants found the smoke detector too sensitive and disconnected the smoke detector from the ceiling. I find the tenants did not have the right to remove the smoke detector given its function as a safety device. Therefore, on the balance of probabilities, I find the tenants' efforts to silence the smoke detector and disconnecting the smoke detector likely damaged it.

Given smoke detectors generally have a useful life of 7 years and the smoke detector was one year old at the end of the tenancy, I award the landlord 6/7 of the cost of a new smoke detector and battery. Therefore, the landlord is awarded \$32.62 ($\$38.06 \times 6/7$).

Painting

Based upon the landlord's photographic evidence I accept that there were several patches with mis-matched paint on the living room and bedroom walls. However, the issue is whether the tenants are responsible for the cost of repainting these walls.

Based upon the move-in inspection report I accept the tenants' submissions that there were screw holes in the living room walls and previous touch ups in the bedroom using the mis-matched paint provided to them by the landlord.

I find the move-in inspection report does not indicate that there were only a couple of screw holes as submitted by the landlord. Rather the report merely indicates that there were "# screws" in the living room walls at the beginning of the tenancy. I find this notation to be too vague to corroborate the landlord's position that there were only a couple of holes prior to this tenancy.

I find the move-in inspection report indicates there was "some discolouration" on the bedroom walls but does not indicate how many spots. I find this description too vague to corroborate the landlord's submission that there were only a few stains prior to this tenancy.

Further, as provided in Residential tenancy Policy Guideline 1, tenants are expected to put up pictures and art during the tenancy and this is considered wear and tear, not damage. Unless, the amount number of holes is excessive. I find the landlord has not proven that there was an excessive amount of art hung during this tenancy considering the pre-existing holes and stains.

Finally, a landlord is expected to repaint a rental unit at reasonable intervals. Residential Tenancy Policy Guideline 40 indicates interior paint has a useful life of 4 years. Therefore, I find the existing wall paint was likely significantly depreciated at the end of this tenancy.

For all of the reasons indicated above, I find the landlord has not established that the tenants are responsible for paying for the cost of repainting the walls in the living room and bedroom. Therefore, this portion of the landlord's claim is dismissed.

In summary, the landlord has been awarded the following amounts:

Hydro bill of August 21, 2012 (50%)	\$ 21.87
Gas bill pro-rated to Sep 1, 2012 (50%)	29.28
Cleaning	112.00
Smoke detector and battery	32.62
Painting living room and bedroom	<u>nil</u>
Total	\$ 195.77

I further award the landlord approximately one-half of the filing fee, or \$24.98, bringing the landlord's total award to \$220.75.

As the landlord continues to hold \$585.75 of the tenants' security deposit the landlord is ordered to return the balance of \$365.00 to the tenants forthwith.

The tenants have been provided a Monetary Order in the amount of \$365.00 to serve and enforce as necessary to ensure payment is made.

Conclusion

The landlord is authorized to retain \$220.75 from the remainder of the security deposit and must return the balance of \$365.00 to the tenants without further delay. The tenants have been provided a Monetary Order in the amount of \$365.00 to serve and enforce as necessary.

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: October 17, 2012.

Residential Tenancy Branch