



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 a landlord's application for compensation for damage to the rental unit and authorization to retain part of the security deposit. 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.

Issue(s) to be Decided

1. Has the landlord established that the tenants damaged the rental unit and an entitlement to compensation in the amount claimed?
2. Disposition of the balance of the security deposit.

Background and Evidence

The tenants took possession of the rental unit April 1, 2011 and paid a security deposit of \$662.50 and a pet deposit of \$662.50. The tenancy ended October 31, 2012 and the landlord refunded the pet deposit and security deposit to the tenants, except for \$375.00, within 15 days of the tenancy ending. As the tenants did not agree to a deduction of \$375.00 the landlord applied for authorization to retain this amount from the security deposit within 15 days of the tenancy ending.

The landlord submitted that the tenants used screws, nails and wall anchors to hang their artwork, without obtaining permission to do so, in the living room/dining room area and in one of the bedrooms. The landlord pointed to a section of the tenancy agreement that states: "Hooks, nails, tapes, or other devices for hanging pictures or plants, or for affixing anything to the rental unit or residential property will be of a type approved by the landlord and used only with the landlord's prior written consent."

The landlord submitted that using screws and wall anchors caused a "volcano" effect when removed and that a professional was called in to patch the holes and repaint the

walls with the holes. The landlord paid \$375.00 to have this work completed and the landlord supplied a copy of the receipt as verification of this amount.

It was undisputed that the living room/dining room walls were painted approximately six months prior to the start of the tenancy. It was undisputed that the tenants painted the bedroom walls, with the landlord's consent and paint supplied by the landlord, just prior to the start of the tenancy. The parties disagreed as to the reason the bedroom walls were repainted: the landlord suggesting it was because the tenants wanted different a colour; the tenant stating that the bedroom walls were scuffed and marked.

The tenant acknowledged that six screws and one wall anchor were used in the living room/dining room walls and that they were left in place at the end of the tenancy. The tenant denied that screws were used in the bedroom; rather, two nails were placed in the walls and left very small holes.

The tenant was of the position the walls were not damaged and that the holes amount to reasonable wear and tear. The tenant also submitted that the landlord did not specifically discuss the term of the tenancy agreement requiring the tenants to gain permission to affix artwork to the walls with them as she had done for most other terms of the tenancy agreement. Nor did the landlord say anything about their artwork hanging on the walls when she attended the unit on various occasions. Finally, the tenant submitted that the landlord's monetary claim is excessive considering the holes were easily patchable and the paint could have been just touched up.

The landlord stated that had the tenants enquired with her she would have approved use of proper picture hangers. The landlord acknowledged there was paint left over from when the tenants painted the bedrooms but it was not enough to paint the two walls that needed repainting. The landlord submitted that the holes required three applications of filler and that the workman advised her that just touching up the patches would be visible.

The tenant acknowledged that picture hangers would have been used except that the items being hung were too heavy for such. Should the tenants be held responsible for repairing the walls it should be limited to the living/dining room walls as the bedroom walls had only two small nail holes.

I heard that move-in and move-out inspection reports were prepared by the landlord although neither party supplied a copy of the reports with their evidence packages. Both parties provided photographs in support of their respective positions.

Analysis

The Act provides that a tenant is responsible for repairing damage they caused through their actions or neglect during the tenancy. The Act provides that reasonable wear and tear is not damage.

Residential Tenancy Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* provides policy statements as to the intent of the legislation. It provides, in part:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit...

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

In this case, the tenants were required to gain the landlord's prior written consent and use the picture hanging devices approved by the landlord. This requirement is set out in the written tenancy agreement that the tenants acknowledged having read and agreed to be bound by, as evidence by their signatures on the document. It is upon the party signing a contract to read and understand their obligations under that contract. The other party is not responsible for reviewing or discussing each of the terms that are clearly expressed in the written document.

Although the landlord may have remained silent about artwork hanging on the walls during visits to the rental unit the tenants I find the silence insufficient to constitute implied waiver of the landlord's rights under the tenancy agreement, especially since the artwork was already hung.

As it was undisputed that the tenants did not determine the acceptable picture hanging devises to use and did not have the landlord's prior written consent to use nails, screws, and wall anchors, I find the tenants violated their tenancy agreement.

By failing to gain the landlord's permission to use screws, nails and wall anchors when required to do so by way of their tenancy agreement, I find the tenants did not follow the landlord's instructions; thus, I consider the holes that resulted are constitute damage.

Upon review of the photographs, I accept that the use of the screws and wall anchor left a "volcano" effect that likely required multiple applications of filler to smooth the wall. I find it reasonable that a professional looking result would require the entire wall to be painted to avoid visible flashing.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Interior paint has an average useful life of four years. At the end of this tenancy the interior paint in the living room/dining room was two years old. The paint in the bedroom was approximately 1.5 years old.

I find the tenants responsible for the wall patching and but only a portion of the painting cost after allowing for depreciation and less damage in the bedroom. The repairman's invoice does not breakdown the cost associated to filling holes and the cost associated the painting or the cost of painting particular walls or rooms. As I cannot decipher the cost attributable to each, I find it reasonable to apportion the invoice 50% to the tenants.

In light of the above, I award the landlord one-half of the amount claimed, or \$187.50. In recognition of the landlord's success with this application, I award the landlord one-half of the filing fee paid for this application, or \$25.00.

The landlord has been awarded a total of \$212.50 and since she is holding \$375.00 of the tenants' security deposit I order the landlord to pay the tenants the balance of \$162.50 without further delay.

Pursuant to Residential Tenancy Policy Guideline 17: *Security Deposit and Set Off*, the tenants are provided a Monetary Order in the amount of \$162.50 with their copy of this decision to serve and enforce as necessary.

Conclusion

The landlord was partially successful in this application. The landlord has been awarded \$212.50 and is ordered to return the balance of the tenants' security deposit in the amount of \$162.50 without further delay. The tenants have been provided a Monetary Order in the amount of \$162.50 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: February 14, 2013

Residential Tenancy Branch

