



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August 15, 2011. Rent in the amount of \$900.00 was payable on the 15th of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on January 15, 2013.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

| | | | |
|----|----------------------------------|-----------|---------------|
| a. | Carpet Cleaning | \$ | 82.36 |
| b. | Repairing and painting the walls | \$ | 823.51 |
| c. | Filing fee | \$ | 50.00 |
| | Total claimed | \$ | 973.51 |

At the outset of the hearing the tenant acknowledged the carpets were not cleaned at the end of the tenancy as required by the Act, and agreed to compensate the landlord the amount of \$82.36.

The landlord testified the tenant used excessive nails throughout the rental unit to the estimated amount of 260. The landlord stated by the time he patched the holes, the walls required to be painted.

The landlord testified that on January 14, 2013, the parties participate in a move-out inspection. At that inspection it was found that there were:

- 52 holes/patches in the kitchen and six nails still remained;
- 47 holes/patches in the living room;
- 6 holes/patches in the laundry room;
- 24 holes/patches in the main bedroom;
- 135 holes/patches in the 2nd bedroom, four nails were still present and there was also 15 3 by 6 inch scuff marks on the ceiling; and ,
- 6 holes/patches in the main bathroom, two large nails were still present.

The landlord testified that he had two estimates for the repairs and that both of these estimates were approximately \$1,200.00. The landlord stated to minimize the cost, he performed the work and purchase the supplies and seek to be compensated the amount of \$823.51. Filed in evidence are digital photographs and a video of the walls. Filed in evidence are two estimates for repairs.

The tenant testified that she is an interior decorator and enjoys making her home comfortable and does not believe this to be excessive. The tenant stated she could concede the 2nd bedroom may have been excessive as the children use thumb tacks to hang their pictures on the walls.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

In this case, the tenant agreed they did not clean the carpets at the end of the tenancy, and agreed to compensate the landlord the amount of \$82.36. Therefore, I find the landlord is entitled to compensation for carpet cleaning in the amount of **\$82.36**.

In this case, the move-out condition inspection report indicated there were 276 holes throughout the rental unit and because of the holes the walls were required to be patched and painted. The digital photographs submitted by the landlord support their position.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear.

Under Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant must pay for repairing walls where there are an excessive number of nail holes have been used and left the wall damages.

While I accept that the evidence of the tenant that she enjoys making their rental unit comfortable for her family and may decorate the unit to meet her family needs, however, I find the that 276 nails holes is an excessive amount and does not constitute normal wear and tear, as normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. I find the tenant has breached section 37 of the Act, when they failed to repair the walls at the end of the tenancy.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the paint had a useful life span of four years, and the paint was two years old, the landlord is entitled to the depreciated value of 50 percent.

The evidence of the landlord was it cost \$183.51 for the paint and supplies; this is supported by the receipt submitted as evidence. Therefore, I find the landlord is entitled to the 50 percent depreciated value of the paint and supplies in the amount of the **\$91.75**.

The evidence of the landlord was that it took 32 hours to patch and paint the walls and the one ceiling. The landlord seeks compensation at the rate of \$20.00 per hour; I find that to be reasonable. I find the landlord is entitled to be compensated for the hours it took to repair and paint the walls, as the onus was on the tenant to make the repair prior to the tenancy ending. Therefore, I find the landlord is entitled to in the amount of the **\$640.00**.

I find that the landlord has established a total monetary claim of **\$781.75** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord to retain the deposit and interest of **\$450.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$331.75**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 19, 2013

Residential Tenancy Branch