



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, 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 May 30, 2009. Current rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenant. The tenancy ended on January 30, 2013.

The parties agreed a move-in and move-out condition inspection report was completed. The parties agreed that both parties were in disagreement at the move-out inspection as to whether or not the state of the rental unit was left as normal wear and tear or damage.

The landlord claims as follows:

a.	Repair damages to the interior walls	\$ 615.00
b.	Damage to stair nose	\$ 265.00
c.	Cleaning	\$ 860.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 1,790.00

Repair damages to the interior walls

The landlord's agent testified that at the move-out inspection, the walls in the rental unit were found damaged. The agent stated in each room there were gouges, scratches and chips out of the drywall. The landlord stated the construction company had to mask and prep the repairs and then make the necessary repairs to the drywall. The landlord seeks to recover the cost of \$325.00. Filed in evidence are photographs of the walls.

The landlord's agent testified the master bedroom had some type of greasy substance on the wall, which they could not identify and the wall needed to be primed. Filed in evidence is a photograph of the wall.

The landlord's agent testified that the entire unit was required to be painted, however, as a result of the paint being almost four years old they are not seeking compensation.

The landlord's testified they are seeking cost directly relating to the damage caused by the tenant as these were additional costs that they would not have incurred under normal use and normal wear and tear.

The tenant testified that he lived in the rental unit for three and a half years, and that the gouges, dent and chips in the paint and drywall are normal wear and tear when you have children. The tenant stated he agreed the wall in one of the bedrooms was caused by his child and concedes that was damage.

The tenant testified that he does not agree that the wall in the master bedroom need to be repaired. The tenant did not recall any substance on the wall.

Damage to stair nose

The landlord's agent testified that a stair nose was broken, as there was a chunk of wood missing and it had to be removed and a new stair nose installed. The landlord's agent stated that the unit was built in 2007 and this is not normal wear and tear. Rather, damage caused by the tenants neglect. The landlord seeks to recover the cost of the repair in the amount of \$265.00. Filed in evidence is a photograph of the stair.

The tenant testified that he believes this is normal wear and tear.

Cleaning

The landlord's agent testified the tenant did not clean the rental unit, and the blind, windows, appliance, bathrooms, kitchen cabinet and all trim and floors needed to be cleaned. The landlord seeks to recover the cost of the cleaners in the amount of \$860.00.

The tenant agreed the unit was not properly cleaned and does not dispute this portion of the landlord's claim.

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.

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.

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. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Repair damages to the interior walls

In this case, the evidence of the landlord was the tenant caused damage to the walls. The photographic evidence support that there are gauges, dents, and chips in the drywall throughout the rental unit. The evidence of the tenant was this is normal wear and tear when you have children. However, normal wear and tear is the natural deterioration of an item due to reasonable use and the aging process, not from children causing damage to the walls, or by being careless.

Further, the evidence of the landlord was the master bedroom wall had a greasy substance that they could not identify. The photographic evidence of the master bedroom support the landlord's position as there are dark splatters markings on the wall. The tenant did not have a reasonable response to what cause the marks.

As a result, I find the walls were damaged by the action or neglect of the tenant. Therefore, I find the landlord is entitled to recover the cost of repairing the walls in the amount of **\$615.00**.

Damage to stair nose

The photographic evidence supports that the stair nose is broken by having a piece of wood broken off the edge. The evidence of the tenant was this was normal wear and tear. However, normal wear and tear is the natural deterioration of an item due to reasonable use and the aging process.

In this case, the rental unit was built in 2007. The photographic evidence support that the stairs were in reasonable condition and there appears to be little wear and tear, which would be consistent with wood stairs that are approximately five years old. However, one stair is broken and it appears to be an unusual shape, not what one would expect to see if the stair was broken while walking on them. Rather it looks like something was dropped or something was smashed breaking a piece of wood out of the stair nose.

As a result, I find the stair was damaged by the action or neglect of the tenant. Therefore, I find the landlord is entitled to recover the cost of repairing the stair in the amount of **\$265.00**.

Cleaning

In this case, the tenant did not dispute that the unit was not cleaned as required by the Residential Policy Guidelines. Therefore, I find the landlord is entitled to compensation for the cost of having the unit cleaned in the amount of **\$860.00**.

I find that the landlord has established a total monetary claim of **\$1,790.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$850.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$940.00**.

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: May 03, 2013

Residential Tenancy Branch