



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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, for money owed or compensation for damage or loss under the Act, 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

Are the landlords entitled to a monetary order for damages to the unit?

Are the landlords entitled to monetary compensation for damages or loss under the Act?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 1, 2008. Rent in the amount of \$1,043.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant. The tenancy ended on or about June 29, 2013.

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

The landlords claim as follows:

a.	Painting	\$1,895.25
b.	Loss of revenue	\$ 487.00
c.	Filing fee	\$ 50.00
	Total claimed	

The landlord testified that the tenant painted the rental unit with bright colour paint without their consent. The landlord stated the livingroom wall was painted purple, the kitchen walls were painted lime green, bedroom two was painted a bright sky blue, and the tenant painted the wood-like finish doors white.

The landlords testified that the tenant was required to return the rental unit to the original condition as required by the Act. The landlord stated that the tenant applied a coat of primer, however, left the walls unpainted. The landlord stated that they had to hire a painting company to restore the unit to its original condition. The landlords seek to recover the cost of painting in the amount of \$1,895.25.

The landlords testified that they were unable to rent the unit for two weeks as a direct result of the tenant's not restoring the unit to the original condition and seek to be compensation for their loss in the amount of \$487.00.

The tenant testified that he applied a coat of primer to the walls. The tenant stated that he felt the landlord was responsible to apply the last coat of paint as it is the landlord's responsibility to paint at regular basis.

The tenant testified that the landlord has not provided a receipt for the painting and question the amount claimed.

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 landlords have the burden of proof to prove their claim.

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.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord 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.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, any changes to the rental unit not consented to by the landlord must be returned to the original condition.

If the tenant does not return the rental unit to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant.

The evidence of both parties was that the tenant had painted bright colours on the walls without the consent of the landlord. The evidence of the tenant was they covered it with primer, but did not paint as they felt that the landlord was responsible to paint.

However, the landlord is only required to paint at reasonable intervals when necessary. The tenant is responsible to paint or make repairs where the work is necessary because of damages that they are responsible for, such as painting the unit in bright colors. As a result, I find the tenant breach the Act, when they failed to restore the unit to its original condition.

In this case, the evidence of the landlords was that it cost the amount of \$1,895.29 to restore the rental unit to its original condition. The evidence of the tenant was that they question the actual amount claimed as the landlord has failed to provide a copy of the receipt as evidence to support their claim. As a result, I find the landlord have failed to provide proof of the actual amount to repair the rental unit.

However, I am satisfied the tenant breached the Act, and the landlord suffered a loss, by having to paint the unit. Based on the photographs and the size of the rooms, I find a reasonable amount for compensation without verification would be \$500.00. Therefore, pursuant to section 67 of the Act, I grant the landlord compensation in the amount of **\$500.00**.

The evidence of the landlords was that due to the condition of the unit they were unable to rent the unit for two weeks as they had to hire painters and have the unit painted.

Under the Residential Policy Guideline even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent

As I have previously found that the tenant had breached the Act, when they failed to restore the premises to its original condition as required and as a result of that breach the landlords were unable to rent the unit for a period of two weeks. I find the landlords are entitled to recover the cost of loss of rent in the amount of **\$487.00**.

I find that the landlords have established a total monetary claim of **\$1,037.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$500.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of **\$537.00**.

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

Conclusion

The landlords are granted a monetary order and may keep the of the security deposit in partial satisfaction of the claim and the landlords are 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: November 5, 2013

Residential Tenancy Branch

