



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain 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. Is the landlord entitled to compensation for damage to the rental unit?
2. Is the landlord authorized to retain all or part of the security deposit?

Background and Evidence

The tenancy commenced July 1, 2012 and the tenants paid a security deposit of \$650.00. The tenancy ended January 31, 2014. The tenants and an agent for the landlord participated in move-in and move-out inspections together and the landlord's agent prepared condition inspection reports that were given to the tenants.

At the move-out inspection the tenants acknowledged responsibility for a burn on the flooring and paid the landlord compensation of \$189.00 as requested. As the tenants paid for this damage, the security deposit in the full amount remains in trust and the landlord's monetary claim was reduced by \$189.00.

The landlord is seeking to retain \$646.80 of the security deposit for wall repairs and repainting. In support of this claim the landlord submitted a copy of the tenancy agreement including an addendum that includes the term "any marks on the walls that are beyond normal wear and tear will be cleaned and repaired"; photographs of some of

the walls in the rental unit and a copy of an estimate for \$616.00 plus GST marked as “approved” to:

1. Remove 44 wall anchors
2. Sand and fill x 2
3. Prime (tinted)
4. Top coat to match existing walls
5. Master bedroom baseboard touch up and chaulking [sic] included
6. Repairs to area in garage included

The landlord also provided copies of estimates that were “declined” in the amounts of: \$1,180.00 to repair and paint repaired walls only (including a large crack in the living room wall near the peak of the ceiling); \$2,030 to repair and repaint walls the entire unit; and \$347.75 to repair and repaint the garage.

The tenants acknowledged hanging artwork on many walls in the rental unit and did not deny that there were approximately 44 wall anchors or holes that resulted. The tenants submitted that they were permitted to hang artwork and there was no discussion as to filling in holes and if there had been they would have taken necessary action. The tenants were of the position that this many holes is not excessive given the size of the rental unit and approximately 28 wall surfaces on which to hang artwork, including a few very long or large walls. The tenants submitted that no one wall had more than three pieces of art hung on the wall.

The tenants denied damaging the wall in the garage. The tenants submit that the damage was pre-existing although the agent had not noted it on the move-in inspection report. However, it was undisputed that the tenants brought it to the landlord's attention during the tenancy.

The tenants pointed to the move-out inspection report and “security deposit refund” statement as evidence that the walls in the unit and garage were not damaged by the tenants. The move-out inspection report indicates the walls were in “good” condition. The “security deposit refund” statement makes mention of the floor damage only.

In response to the tenant's submission concerning the condition of the rental unit as recorded on the move-out inspection, the landlord's agent explained that he was not of the opinion the holes that resulted from the tenants hanging artwork was excessive or damage; however, after the owner view the property the owner instructed the landlord to pursue this claim.

Upon enquiry, the landlord's agent stated the walls were likely last painted when the unit was constructed approximately 7 or 8 years prior.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Under the Act, a tenant is required to repair damage they cause; however, the Act provides that reasonable wear and tear is not damage. The addendum provides that marks on the walls "that are beyond normal wear and tear will be cleaned and repaired" and I find this term is consistent with the Act.

In this case, there is no dispute that there were a number of wall anchors installed during the tenancy for the purpose of hanging artwork. The issue is whether the installation of such wall anchors exceeds normal or reasonable wear and tear. In determining whether the installation of the wall anchors exceed normal wear and tear, I have turned to Residential Tenancy Policy Guideline 1 (the policy guideline).

The policy guideline provides policy statements as to the responsibilities of a landlord and tenant with respect to repairing, cleaning and maintaining a residential property. With respect to walls, the policy guideline provides that it is to be expected that a tenant will hang artwork. If a landlord gives a tenant specific instructions with respect to hanging artwork and the tenant follows those instructions the tenant is not responsible for filling in the holes. The policy guideline also provides that a tenant is responsible for repairing walls where the tenant creates an "excessive" number of holes, large nail holes, or screws or tape were used that left damage.

Based upon the verbal testimony provided to me, I am satisfied the landlord did not provide the tenants with specific instructions as to how they should hang their artwork. In the absence of specific instructions, it is upon the tenants to hang their artwork so as to not cause damage beyond reasonable wear and tear, as provided under the Act and the addendum in there tenancy agreement. Therefore, it is before me to determine whether there were an "excessive" number of holes, large nail holes, or screws or tape that were used that left damage.

The move-out inspection report does not indicate there was any damage to the walls. As provided in the Residential Tenancy Regulations, the condition recorded on a condition inspection report is considered the best evidence as to the condition of a rental unit unless there is a preponderance of evidence to the contrary. I was offered

photographs and estimates as evidence to contradict the condition as recorded on the move-out condition inspect report.

Given the undisputed submissions I was provided concerning the size of the rental unit and the number of large walls, I find that 44 holes in the walls is not an excessive number. However, the photographs depict walls anchors and screws were used to hang artwork and I find using such methods to hang artwork creates large holes which, I find, constitutes wall damage. Therefore, I find there is sufficient evidence to contradict the condition as recorded on the condition inspection report.

I also accept the undisputed submissions as sufficient to contradict the condition of the garage wall as reflected on the move-in inspection report. Therefore, I find the tenants are not obligated to pay for damage to the garage wall. However, the estimate provided for repairing and repainting the walls is all inclusive and it impossible for me to determine exactly what portion of the estimate pertains to the garage wall damage.

Finally, interior walls are expected to be painted every four years and I find it very likely, based upon the landlord's testimony, that these walls were painted more than 4 years prior. As such, I find it appropriate to reduce the landlord's award to reflect depreciation of the interior paint. However, the difficulty in determining the reduction for depreciation is that the estimate is all inclusive and includes a number of activities aside from painting.

After taking all of the above into consideration, I find it reasonable and appropriate to estimate the landlord's entitlement to compensation to 1/3 of the estimate or \$215.60 [$\$646.80 \times 1/3$].

I make no award for recovery of the filing fee as I was not provided evidence to suggest the landlord attempted to raise this issue with the tenants at the time of the move-out inspection or prior to filing this application.

In summary, the landlord is authorized to retain \$215.60 of the security deposit and the landlord is ordered to return the balance of \$434.40 to the tenants without further delay.

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenants with a Monetary Order in the amount of \$434.40 to ensure the landlord refunds the balance of security deposit.

Conclusion

The landlord has been awarded \$215.60 for wall damage and is authorized to deduct this amount from the security deposit. The landlord has been ordered to return the balance of the security deposit of \$434.40 to the tenants without further delay. The tenants have been provided a Monetary Order in the amount of \$434.40 to ensure payment is made by the landlord.

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: June 26, 2014

Residential Tenancy Branch

