



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of repairs, painting, photographs, bulbs and for the filing fee. The tenant applied for the return of the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the cost of repairs painting, photographs, bulbs and for the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on March 01, 2013 and ended on March 31, 2014. The monthly rent was \$2,650.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,325.00.

The landlord filed a copy of the move in and move out inspection reports. The tenant signed the report in agreement. The tenant stated that after the parties agreed on the discrepancies, the landlord added some more.

The landlord stated that the tenant caused damage to the laminate, made a dent in the door of the refrigerator, damaged the walls and failed to replace two halogen bulbs.

The landlord is claiming the following:

1.	Replace laminate flooring	\$473.00
2.	Replace refrigerator door	\$1,285.62
3.	Labor to dispose of door	\$257.25
4.	Painting	\$1,670.00
5.	Photographs	\$20.57
6.	Halogen bulbs	\$27.00
	Total	\$3,733.44

The tenant denied having caused damage other than wear and tear to the laminate flooring. The landlord filed photographs to show multiple areas of damage but the move out inspection report and the tenant's photograph showed just one area of damage. The damage is barely visible in the tenant's photograph but is visible in a close up filed by the landlord.

The tenant agreed to having created a dent in the refrigerator door. Both parties agreed that the refrigerator is fully functional.

The rental unit is approximately five years old. The move out inspection indicates two areas that require painting and one of them is also noted in the move in inspection report. The tenant agreed that two halogen bulbs had burnt out and had not been replaced.

Analysis

1. Replace laminate flooring - \$473.00

Based on the testimony of both parties, the photographs filed into evidence and the move out inspection report, I find that the laminate flooring had minor damage to one area. The landlord indicated that there were other areas not mentioned in the move out inspection report that were also damaged.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the move out inspection and after the report is signed by both parties.

Since the testimony of both parties is conflicting with regard to the extent of the damage, I will use the move out inspection report which is evidence filed by the landlord to assess the damage that the tenant is responsible for.

In this case I find that the damage to the laminate flooring that the tenant is responsible for, is not extensive and is located on one laminate board in the living room. The landlord has not filed a receipt for the cost he incurred to replace a laminate board. The landlord stated that he used a replacement that he had in stock. Based on the above, I award the landlord \$50.00 to replace the laminate board in the living room.

2. Replace refrigerator door - \$1,285.62
3. Labor to dispose of door - \$257.25

The tenant took responsibility for the dent on the door of the refrigerator. The landlord agreed that the refrigerator door has not been replaced or repaired and is currently in use by the new tenant. Therefore I find that the refrigerator is functional and the damage is cosmetic. I find that while the door has a dent, this damage does not affect its functionality and the appliance is currently in use. Therefore I find that the landlord is not entitled to his claim to replace the door and the cost to dispose of the door. However, the dent has reduced the value of the refrigerator and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the estimate filed by the landlord, the age of the refrigerator (5 years) and the useful life of a refrigerator as per *Residential Tenancy Policy Guideline #37* (15 years), I award the landlord a minimal award of \$100.00.

4. Painting - \$1,670.00

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. The landlord stated that the unit is five years old and except for touch ups has not been painted. Therefore by the end of the tenancy, the painting had outlived its useful life. Accordingly, the landlord's claim for \$1,670.00 for painting is dismissed.

5. Photographs - \$20.57

The legislation does not permit me to award any litigation related costs other than the filing fee.

6. Halogen bulbs - \$27.00

The tenant agreed that the bulbs were not replaced prior to moving out and therefore I award the landlord his claim.

Overall the landlord has established a claim as follows:

1.	Replace laminate flooring	\$50.00
2.	Replace refrigerator door	\$100.00
3.	Labor to dispose of door	\$0.00
4.	Painting	\$0.00
5.	Photographs	\$0.00
6.	Halogen bulbs	\$27.00
	Total	\$177.00

Both parties must bear the cost of filing their own applications.

I order that the landlord retain \$177.00 from the security deposit and return the balance of 1,148.00 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,148.00**.

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: August 12, 2014

Residential Tenancy Branch

