



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for 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 parties agreed that the tenancy began on January 1, 2014. Rent in the amount of \$1,300.00 was payable. The tenant paid a security deposit of \$650.00. The parties agreed that the tenant gave the landlord permission to retain \$200.00 from the security deposit and the remainder of \$450.00 is currently held by the landlord.

The parties agreed a move-in and move-out condition inspection report was completed. On the report the tenant did not agree that the move-out condition inspection report fairly represented the condition of the rent unit at the end of the tenancy. The tenant alleged that the landlord made further alteration to the report after it was signed.

The landlord claims as follows:

a.	Electrician cost	\$200.00
b.	Paint and hardware	\$150.00
c.	Miscellaneous items	\$100.00
d.	Filing fee	\$ 50.00
	Total claimed	\$500.00

Electrician cost

The landlord testified that the tenant's son tampered with the electrical system by changing a light switch and there was no reason for him to do this except that he thought the faceplate was juvenile. The landlord stated that she had to bring in an electrician to fix the work and inspect the breakers to make sure no damage was done to electrical system.

The tenant testified that her son simply changed the switch. The tenant stated there was no tampering with the electrical system. The tenant stated that the landlord has provided no evidence to support this from the alleged electrician.

Paint and hardware

The landlord testified that the tenant did not have her permission to paint or install hardware in the kitchen cabinetry. The landlord stated that she had to repaint the cabinetry and install additional hardware to make it match.

The tenant testified that when she moved in to the rental unit, the edges of the cabinetry were chipped and the landlord told her at that time that she could paint the cabinetry if she wanted to. The tenant stated that she only painted the edges to cover up the chips. The tenant stated it cost a total of \$40.00 to add the hardware and paint.

The tenant testified that the landlord cost is unreasonable and there is no verification of a receipt and does not believe any work was completed.

Miscellaneous items

The landlord testified that the tenant removed the drawer lines from the kitchen draws and that she had to have them replaced. The landlord stated that she also had to do four hours of cleaning as the rental unit was not left reasonable clean. The landlord stated they also had to make repairs to cover where the tenant had installed hooks and removed curtain rods.

The tenant testified that when the tenancy commenced there were plastic items with holes in them that did not line the draws properly. The tenant stated that she installed and left proper draw liners for the landlord. The tenant stated that she does not agree that any damage was caused by hooks and she did not have curtain rods installed during their tenancy.

The tenant testified that the landlord has provided no documentary evidence to support her 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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although the parties completed a move-out condition inspection report, the tenant did not agree with the report on the date it was signed and alleged it was altered further after it was signed.

In this case, the landlord has provided no documentary evidence such as photographs of the rental unit or of any of the items that they alleged was damaged by the tenant. The landlord has provided no verification of the work said to be completed, such as a report or invoice from the electrician or any other receipts.

I find without any of the above evidence the landlord has failed to provide sufficient evidence to support their claim for damages.

Therefore, I dismiss the landlord's application for damages. As the landlord was not successful with their application, the landlord is not entitled to recover the filing fee from the tenant.

As I have dismissed the landlord's application the landlord is not authorized to retain the tenant's security deposit. Therefore, I order the landlord to return to the tenant the security deposit in the amount of **\$450.00**. The tenant is granted a monetary order should the landlord fail to return the security deposit as ordered.

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

Conclusion

The landlord application is dismissed. The tenant is granted a monetary order for the return of their security deposit.

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: March 06, 2015

Residential Tenancy Branch

