



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, and to recover the cost of the filing fee.

The tenants and an agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

By consent of the parties, the mailing address of the tenants was updated to reflect their current mailing address. Also during the hearing the parties were advised of the conduct expected during the hearing and that interruptions by either party would not be tolerated. During the hearing, the agent was cautioned on several occasions for continuing to interrupt myself and the tenants throughout the course of the hearing.

Eventually, after several cautions to the agent to cease interrupting or face being muted during the hearing, the agent interrupted again and was muted for several minutes before being unmuted. After the agent was unmuted, there were no further incidents during the hearing. The hearing lasted a total of 70 minutes.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement did not exist and that the tenancy was a month to month verbal agreement between the parties which began on July 1, 2013 and ended on January 30, 2015 when the tenants vacated the rental unit. Monthly rent in the amount of \$800.00 was due on the first day of each month. The security deposit of the tenants has already been dealt with in a previous decision.

The landlord's monetary claim for \$1,680.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT
Item 1. Painting and closet costs	\$1,050.00
Item 2. Railing repair	\$630.00
TOTAL	\$1,680.00

The agent testified that an incoming condition inspection report was not completed at the start of the tenancy and that an outgoing condition inspection report was not completed at the end of the tenancy.

Regarding item #1, the agent testified that the interior of the rental unit was painted in May of 2013. The tenants stated that previous tenants were residing in the rental unit before they moved in in July 2013. The tenants disputed that the rental unit paint was new when they moved in. The photos submitted in evidence by the landlord dated May 6, 2013 do not show a completed paint job. The photos show unpainted areas in every corner of each room in the photos and around the light switches, electrical plugs, and cable/phone plugs. In the photos submitted in evidence by the landlord dated February 1, 2015, it is clear that the original paint job was substandard as the painters tape in areas was clearly left on while the paint was applied as some tape had since peeled off exposing the original paint colour underneath. The agent did not dispute that the photos showed a substandard painting job in May 2013. Furthermore, the corners of the walls were not completely covered with paint. In addition, there is bubbling of paint and

peeling of tape which supports that the painting job completed in May 2013 was substandard. The tenants did confirm; however, that their child had drawn on some of the walls which is shown in three of the photos.

The agent also alleged that the tenants damaged the closet doors which the tenants vehemently denied. There were no before photos of the doors submitted in evidence to support that the closet doors were not damaged at the start of the tenancy. An invoice dated February 9, 2015 was submitted in evidence for the amount \$1,050.00.

Regarding item #2, the landlord has claimed \$630.00 to repair an outside black aluminum stair railing near where the tenants parked their car. The tenants denied damaging the railing and claim that while they parked closely at times, they never damaged or drove into the railing during the tenancy. The agent stated the tenants admitted to have a bent license plate, which the tenants stated was from an accident that occurred elsewhere on a street and not in the rental unit driveway. The agent claims that the tenants agreed to repair the damaged railing before vacating the rental unit which the tenants denied. There were no before photos of the aluminum stair railing submitted in evidence. An invoice dated August 27, 2015 was submitted in the amount of \$630.00.

Analysis

Based on the documentary evidence, the oral testimony of both parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

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.

Item #1 – The landlord has claimed \$1,050.00 for painting costs. I find the photos submitted by the landlord supports that the painting in May of 2013 was incomplete and of substandard quality. This is supported by the agent's own testimony in which the agent stated that he could not disagree with my description of what the photos showed regarding a substandard painting job. In addition, the landlord breached sections 23 and 35 of the *Act* which require that a landlord complete and sign a condition inspection report at the start and end of the tenancy, which the landlord failed to do. The tenants did; however, confirm that their child had drawn on some of the walls of the rental unit which is a breach of section 37 of the *Act* as I find that drawing on the walls of a rental unit exceeds reasonable wear and tear.

Although I find the landlord has failed to provide sufficient evidence to prove the value of the damage to the walls that were drawn on by the tenants' child, I grant the landlord a nominal amount of **\$50.00** to acknowledge the tenants' breach of section 37 of the *Act*. The tenants are liable for the damage their child made by drawing on some of the walls which is supported by the three photos submitted in evidence. The remainder of item #1 is **dismissed** due to insufficient evidence, **without leave to reapply**.

Item #2 – The landlord has claimed \$630.00 to repair the outside aluminum step railing. As the landlord failed to provide before photos, and breached sections 23 and 35 of the *Act* as stated above, I find the tenants' testimony to be just as probable as the agent's testimony and due to the landlord having the onus of proof, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

As the landlord was only successful for a small portion of their claim, I grant the landlord **\$25.00** of the landlord's filing fee.

I caution the landlord to comply with sections 23 and 35 of the *Act* in the future which requires the landlord to complete and sign a written condition inspection report at the start and at the end of a tenancy which the landlord failed to do in the matter before me.

I caution the landlord to comply with section 13 of the *Act* in the future which requires a landlord to complete a tenancy agreement in writing which the landlord failed to do in the matter before me.

I find that the landlord has established a total monetary claim of **\$75.00** comprised of the nominal amount of **\$50.00** to acknowledge the breach of the tenants when their child drew on some of the walls of the rental unit which exceeds reasonable wear and tear, plus recovery of **\$25.00** of the filing fee.

Based on the above, I grant the landlord a monetary order pursuant to section 67 of the *Act*, in the amount of **\$75.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

With the exception of \$75.00 as described above, the landlord's application has been dismissed due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 7, 2016

Residential Tenancy Branch

