



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant admitted service of the landlord's dispute resolution package including all evidence before me.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 October 2014. The tenancy ended 1 November 2015. Monthly rent was \$1,650.00. The landlord continues to hold the tenant's security deposit in the amount of \$825.00, which was collected at the beginning of the tenancy.

The move out condition inspection was originally scheduled for 31 October 2015. The tenant was not prepared to move out at that time. By mutual agreement, the tenant was given until 1 November 2015 to vacate. The condition inspection was rescheduled for 1030 on 1 November 2015. Before 1000 on 1 November 2015 the tenant emailed the landlord to reschedule the condition inspection for 1145. The landlord received the email before leaving her home. The landlord decided to drive over to the rental unit to oversee the move out. The condition inspection was conducted at 1230.

The parties conducted condition inspections at the beginning and end of tenancy. There is nothing remarkable about the condition inspection report created at the beginning of the tenancy. The condition inspection report created at the end of tenancy notes a scrape in the flooring and chips in the bedroom wall.

The landlord testified that there was a six-inch scrape in the laminate flooring. The landlord provided me with photographs that show the scrape in the flooring. The landlord testified that the laminate was high gloss and accordingly the scrape could not be filled. The landlord testified that she located a contractor that had the same laminate and could replace the scraped board at a cost of \$367.50. The landlord testified that she has not carried out this repair as she is waiting for the outcome of this application. The landlord provided me with a quote from the contractor in the amount of \$367.50.

The landlord testified that the tenant dented the wall and chipped the paint in the third bedroom. The landlord provided me with a photograph of the damage. The tenant testified that the damage was caused in the move when the headboard of the bed dropped on the wall. The landlord provided me with a receipt for this repair in the amount of \$105.00.

The landlord testified that the faucet fell off when the new tenant turned on the water in their condition move in inspection. The landlord provided an invoice from a plumber dated 5 November 2015 in the amount of \$157.50. The invoice is for attaching a loose faucet and auguring two drains. The amounts are not itemized.

The landlord claims for \$776.42:

Item	Amount
Flooring Repair	\$367.50
Wall Repair	105.00
Faucet Repair	157.50
Mileage	13.52
Time	82.90
Filing Fee	50.00
Total Monetary Order Sought	\$776.42

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ...

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the evidence before me, I find that the tenant through her actions or neglect caused the damage to the flooring and the walls. In particular, the tenant

caused scrapes that were not there at the beginning of the tenancy. This damage is not in the nature of wear and tear and constitutes a breach of the tenant's obligations pursuant to subsection 37(2) of the Act. I find that by causing this damage the tenant caused the landlord to incur the costs of repair. The landlord has provided an estimate from a contractor showing that the cost of repair for the floor will be \$367.50. The tenant did not challenge the validity of this estimate. I find that the landlord is entitled to recover \$367.50 for the cost of the laminate repair. The landlord provided an invoice for the wall repair in the amount of \$105.00. The tenant did not contradict the validity of this invoice. I find that the landlord is entitled to recover \$105.00 for the cost of repairing the wall.

Subsection 32(4) of the Act provides that the tenant is not responsible for making repairs for reasonable wear and tear. The landlord seeks recovery of \$157.50 for the amount of a faucet. The landlord has not shown that this damage constitutes damage beyond regular wear and tear. In particular, the faucet merely required tightening as it was loose. As this repair was in the nature of wear and tear, the landlord is not entitled to recover the cost of this repair.

Pursuant to subsection 36(2) of the Act, a landlord must offer a tenant at least two opportunities for inspecting the rental unit at the end of tenancy. Pursuant to subsection 36(1) of the Act, the inspection must occur after the tenant ceases to occupy the rental unit or at another mutually agreed to date.

The landlord claims for the recovery of her mileage and for her time in attending at the rental unit. The landlord suggested rescheduling the condition move out inspection after arriving and finding that the rental unit was not vacant. The tenant was not put on any notice that the rescheduled condition inspection would lead to a claim for mileage costs or the landlord's time. The tenant alerted the landlord that she was running behind prior to the landlord leaving her home. The landlord elected to attend at the rental unit to supervise the tenant's move out. This was not directly caused by the tenant's conduct, but was an election by the landlord. The landlord has not shown any breach of the Act through the mutually agreed to act of rescheduling the condition move out inspection. For this reason, the landlord is not entitled to compensation.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The landlord is entitled to recover \$522.50 from the tenant:

Item	Amount
Flooring Repair	\$367.50
Wall Repair	105.00
Filing Fee	50.00
Total Monetary Order Sought	\$522.50

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain a portion of the security deposit in satisfaction of the monetary award. No interest is payable over this period.

The total amount of the landlord's award is less than the security deposit amount. *Residential Tenancy Policy Guideline*, "17. Security Deposit and Set off" provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit
 unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenant's right to the security deposit has been extinguished. As there is a balance in the amount of \$302.50, I order that the balance of the tenant's security deposit shall be returned to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$302.50 under the following terms:

Item	Amount
Security Deposit	\$825.00
Landlord's Award	-522.50
Total Monetary Order	\$302.50

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 8, 2016

Residential Tenancy Branch