



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 the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and landlord AL (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlords' application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the application.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2013 on a fixed term until July 31, 2014 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$2,350.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of

\$1,175.00 at the start of the tenancy. The tenants vacated the rental unit on April 8, 2016.

The parties agreed that a written condition inspection report was not completed at the start or end of the tenancy.

Landlord

The landlord testified that she was seeking \$1,624.87 in damages.

Drywall Repair

The landlord testified that the tenants' dog significantly damaged the front entrance drywall. The landlord had this area prepped, sanded and painted at the estimated cost of \$350.00 and is seeking to recover this cost from the tenants.

Landscape/yard clean up

The landlord submitted a copy of the signed tenancy agreement and attached addendum that indicates the tenants are responsible for maintaining the landscaping and yard work. The landlord provided pictures taken on April 8, 2016 that depicted the lawn and flowerbeds. The landlord is seeking reimbursement for the \$603.75 landscape bill she incurred on April 12, 2016.

Interior cleaning

The landlord provided an invoice from a cleaning company which described the condition of the rental unit as of April 16, 2016. The invoice detailed the cleaning conducted and charged amount of \$175.00. The landlord seeks to recover this cleaning cost from the tenants.

Interior light bulbs

The landlord replaced interior light bulbs at the cost of \$9.16 and is seeking reimbursement from the tenants. The landlord has submitted the receipt.

Paint for two upper level bedrooms

The landlord testified that the two bedrooms previously occupied by the tenants' children had stickers on the walls and required removal and painting. The landlord painted the rooms herself but requests the tenants reimburse the cost of the paint in the amount of \$146.92. The landlord has submitted a copy of the paint receipt and photos of the stickers on the walls of the two bedrooms.

Damage by fuse box

The landlord testified that there was a hole in the drywall beside the fuse box that required repair. The landlord purchased a face plate to cover the hole and is seeking reimbursement of \$14.54 to cover this cost. The landlord has submitted a copy of the receipt.

Stair railing post repair

The landlord testified that the stair railing post in the front entrance had been scratched and chewed by the tenants' dog and required repair. The landlord paid \$120.00 for this repair and seeks reimbursement from the tenant.

Carpet Cleaning

The landlord submitted pictures of soiled carpets in what she described as the stairs and upstairs hallway. The landlord has submitted a receipt from a carpet cleaning company in the amount of \$170.05 and is seeking reimbursement in the amount of \$179.00 from the tenants.

Photo Development

The landlord had photos developed for the purpose of this hearing and requests reimbursement in the amount of \$26.50.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Tenants

It is the tenants position that the landlord conducted enhancements to the rental unit to prepare the unit for sale. The tenants left the rental unit in the condition they received it.

Drywall Repair

The tenants acknowledged that their dogs did create some damage in the front entrance; however they contended that they prepped the area for paint.

Landscape/yard clean up

The tenants indicated that they maintained the yard as per the tenancy agreement and have provided a copy of a witness statement from the neighbour who regularly cut the tenants lawn. The statement indicated the lawn was mowed just prior to the tenants' vacancy. The tenants testified that a landscape company attended the rental property unannounced on April 4, 2016. The purpose of this visit was to provide the landlord with an estimate in yard enhancement. This was the same company the landlord used after the tenants vacated the rental unit.

Interior cleaning

The tenants testified that they left the rental unit clean and provided photos to substantiate this.

Interior light bulbs

The tenants did not provide a reply in regards to the burnt out light bulbs.

Paint for two upper level bedrooms

The tenants testified that on March 30, 2016 the landlords' realtor attended the house to evaluate what was needed to prepare the unit for sale. The tenants have provided a copy of the text thread substantiating this date. The tenants testified that a quote from the painting contractor to the landlord was provided on April 2, 2016, prior to the tenants' vacancy. The tenants have provided an email from the painting contractor confirming this date.

Damage by fuse box

The tenants did not provide a reply in regards to the damage by the fuse box.

Stair railing post repair

The tenants acknowledged that their dog created damage to this front entrance railing post.

Carpet Cleaning

The tenants contended that they did shampoo the carpets however the carpet was showing signs of wear which included stains.

Photo Development

The tenants did not provide a reply in regards to the photo development.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Drywall Repair

Under section 37 of the *Act*, a tenant must leave the rental unit undamaged except for reasonable wear and tear. The *Residential Tenancy Policy Guideline* (“*RT Policy Guideline*”) establishes that a tenant is generally required to pay for repairs where the tenant or the tenant’s guest causes damages either deliberately or as a result of neglect.

Based on testimony of the landlord, the admission of the tenants and *RT Policy Guideline*, I find the landlord is entitled to compensation for drywall damage to the front entrance. However, I do not find the landlord is entitled to \$350.00 in compensation. The evidence the landlord submitted to substantiate this cost was in the form of an email from the contractor. Specifically the email reads,

“the estimated cost to fix the walls with the damage was \$350.00. We spent 10 hours prepping and sanding the walls in order to get them ready for paint. There were a lot of nail holes which had to be fixed prior to painting.”

The contractor’s email does not specify whether this estimate was exclusive to the front entrance or whether this estimate applied to other areas of the rental unit. Because an inspection report was not conducted at move in, I cannot confidently hold the tenants liable for other drywall damage that may have existed prior to their tenancy. Although the tenants testified they prepped the front entrance area drywall for paint, and the landlord’s pictures depict this, I find the tenant is still responsible for any work the contractor may have had to perform to repair this area further. For these reasons, I award the landlord a nominal award in the amount of \$100.00 for drywall repair to the front entrance.

Landscape/yard clean up

The *RT Policy Guideline* establishes that a tenant is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is also responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. The *RT Policy Guideline* stipulates that the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

As per the submitted tenancy agreement the tenants were responsible for maintaining the landscaping and yard work. Based on the *RT Policy Guideline* and tenancy agreement I find the tenants were responsible for routine yard maintenance in the form of weeding and as per the submitted photos the tenants failed to do so. Accordingly I award the landlord a nominal award in the amount of \$50.00 for weeding.

Based on these same pictures and the tenants' witness statement indicating the lawn was cut, I find that the lawn was cut prior to the tenants' vacancy and do not award the landlord any compensation for lawn cutting.

In relation to the remaining landscape work the landlord had conducted, I find this work exceeds the tenants' responsibility and falls under the responsibility of the landlord as outlined in the *RT Policy Guideline*. For these reasons, I do not award the landlord any further compensation in relation to landscaping other than the \$50.00 for weeding.

Interior cleaning

Pursuant to section 37 of the *Act*, a tenant must leave the rental unit reasonably clean upon vacancy of a rental unit. As per the *RT Policy Guideline* the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit and 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.

Both parties submitted photos of the rental unit. Specifically, the landlord provided close up photos of the oven, mouldings, tile grout, shower drain, shower door frame and kitchen cabinet sink whereas the tenant mainly provided general overview photos of each room. Upon review of the submitted photos and reflection of the parties' testimony I find the tenants left the rental unit in a reasonably clean state with the exception of the oven door, shower drain, shower door frame and kitchen cabinet sink. The oven door appeared dirty, the shower drain contained hairs, the shower door frame appeared brown from the build-up of mildew and the kitchen cabinet sink appeared unwiped and dirty. Based on this, I award the landlord a nominal award in the amount \$87.50 for cleaning.

Interior light bulbs

The *RT Policy Guideline* sets out that a tenant is responsible for replacing light bulbs in the rental unit during the tenancy. Based on this *RT Policy Guideline* and undisputed evidence of the landlord I find the landlord is entitled to \$9.16 in replacement costs for the light bulbs.

Paint for two upper level bedrooms

As per the *RT Policy Guideline* the landlord is responsible for painting the interior of the rental unit at reasonable intervals; however the *RT Policy Guideline* also states a tenant is responsible for all deliberate or negligent damage to the walls. The tenants did not dispute that stickers, as shown in the photos submitted by the landlord, were left on the walls of the two bedrooms. I find it probable that upon removal of the stickers the walls

required some repair and subsequent painting. Because the photos depict what appears to be a total of three walls affected by stickers, I award the landlord half the cost of paint for a total amount of \$73.46.

Damage by fuse box

Although tenants are responsible for deliberate or negligent damage to walls, the tenant has not acknowledged responsibility for this particular wall damage. In the absence of a move in condition inspection report to verify the damage as new, I find the landlord is not entitled to compensation to cover the cost of the face plate used to cover the hole.

Stair railing post repair

Pursuant to section 37 of the *Act* and based on the parties testimony, I find the landlord is entitled to \$120.00 to repair the stair railing post that was damaged by the tenants dog.

Carpet Cleaning

In the absence of a condition report indicting the state of the carpets at move in, I find the landlord cannot substantiate that any stains were a direct result of this tenancy. For this reason I do not find the landlord is entitled to any compensation for carpet cleaning.

Photo Development

I dismiss the landlord's claim of \$26.50 for the development of photos used for this hearing process, as the only hearing-related costs recoverable under section 72 of the *Act* are for filing fees.

Total Damages

In total, I award the landlord damages of \$100.00 for the drywall repair, \$50.00 for weeding, \$87.50 for interior cleaning, \$9.16 for light bulbs, \$73.46 for paint and \$120.00 for the stair railing post for a total of \$440.12.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish that joint move-in and move-out condition inspections must be conducted and reports of inspections must be issued to the tenant. The right of a landlord to claim against the security deposit is extinguished if these report requirements are not met.

In the absence of either a move-in or move-out condition inspection report, I find that the landlord's entitlement to claim against the tenants' security deposit is extinguished. For this reason, I dismiss this portion of the landlords' claim without leave to reapply.

Filing Fee

As the landlords were partially successful in this application, I find that the landlords are entitled to recover \$50.00 of the \$100.00 filing fee for a **total award of \$490.12.**

Conclusion

I issue a monetary order in the landlords' favour in the amount of **\$490.12.**

The landlords' application to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested is dismissed without leave to reapply.

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 25, 2016

Residential Tenancy Branch

