



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution (the "application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords applied for damage to the unit, site or property, to retain all or part of the tenant's security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlords and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. The tenant confirmed that she received and reviewed the landlords' documentary evidence prior to the hearing. The tenant also confirmed that she did not submit documentary evidence in response to the landlords' application and that she would be relying on the documentary evidence submitted by the landlords.

Preliminary and Procedural Matter

At the outset of the hearing, the parties agreed that the landlords had already returned the tenant's security deposit and pet damage deposit. As a result, that portion of the landlords' application was not considered further as the security deposit and pet damage deposit have already been returned to the tenant.

Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The landlords submitted a copy of the tenancy agreements in evidence. The first fixed term tenancy began on October 1, 2015 and ended on February 1, 2016 when a new fixed term tenancy began and reverted to a month to month tenancy after June 1, 2016. Monthly rent of \$975.00 was due on the first day of each month.

The landlords' monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1 – Cost of repairing the paint damage caused by the tenant's sloppy paint job	\$2,352.00
TOTAL	\$2,352.00

Regarding item 1, the landlords are claiming \$2,352.00 to repair the damage they state the tenant caused by completing a sloppy interior paint job of the rental unit after the landlords provided their permission for the tenant to paint the interior of the rental unit during the tenancy. The landlords described the paint damage in detail and referred to several colour photos submitted in evidence. The landlords stated that the tenant used thin paint in areas that had to be repainted, paint seam problems existed, transitions from one wall to another were uneven, lines were not straight, there were paint spots over the floors and the baseboards had been painted by the tenant.

While the tenant did not deny the paint job was "sloppy" the tenant stated that she did her "best". The tenant admitted during the hearing to painting the baseboards by mistake as the paint leaked through the tape that was intended to protect the baseboards.

Regarding the age of the paint at the start of the tenancy, the landlords testified that the last time the rental unit was repainted was in 2013 and that the tenant moved into the rental unit in October 2015. As a result, the landlords stated that the paint was two years old at the start of the tenancy, which the tenant did not dispute during the hearing.

Regarding the value of the amount claimed, the landlords referred to a paint quote in evidence from a painting company. The quote from the painting company indicated an amount of \$2,352.00 and outlined the scope of work as:

“Patching then sanding of walls which are damage from previous renter.

Cleaning of floors and counter tops which have paint drops form not covering floor when the ceiling was painted last.

Repainting of ceiling due to poor coverage from prior painting job, can see through paint to the original color. No bathroom ceiling.

Painting of all walls in main living, entrance, hallway and bedroom, back to the original color. No closets, kitchen or bathroom walls.

Painting of all trim which includes doors, door casing, window trim, baseboards – including closet baseboard – back to original color.

Re cutting wall to ceiling in the kitchen. Dark brown.

Note: There are many painting mistakes and misses from the previous painter that will need to be correct.

Material is included into the price.

Expect start date July 11th to the 15th.

Cost to do this job \$ 2,100 plus tax.”

[reproduced as written]

The landlords stated that they ended up completing the work themselves instead of hiring the painting company. The landlords testified that they spent \$594.70 for paint and painting supplies, plus labour of three people at 12 hours per day for a period of four days valued at \$20.00 per person which labour alone would have been \$2,880.00. As a result of the landlords’ work being higher than the painting quote received from the painting company, the landlords are seeking the cost of the painting quote which is a lesser amount of \$2,352.00 which includes taxes. The total cost of the landlords’ labour plus supplies would have been \$2,880.00 plus \$594.70 for a total cost of \$3,474.70.

The parties were unable to reach a mutually settled agreement during the hearing.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence 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 landlords 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 tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

I have considered the documentary evidence and the testimony of the parties. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the photographic evidence and testimony provided I find the tenant breached section 37 of the *Act* by failing to repair what I find to be a sloppy painting job by the tenant and that the tenant caused damage to the rental unit that was not repaired by the time the tenant vacated the rental unit and was not reasonable wear and tear.

Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements (the “Policy Guideline 40”) states that the useful lifespan of interior paint is four years. I accept the undisputed testimony of the landlords that the interior paint of the rental unit was two years old as of the start of the tenancy and as a result, will deduct a depreciated value of 50% to the landlords’ claim as a result.

Given the above, while I find the landlords have provided sufficient evidence to support their claim, after applying 50% depreciation to the amount claimed of \$2,352.00 I find the landlords have established a monetary claim of **\$1,176.00**.

As the landlords’ application had merit, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find that the landlords have established a total monetary claim in the amount of **\$1,276.00** pursuant to section 67 comprised of \$1,176.00 for item 1 plus \$100.00 for the recovery of the cost of the filing fee. Accordingly, I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,276.00**.

Conclusion

The landlords’ claim is partially successful.

The landlords have established a total monetary claim in the amount of \$1,276.00 and are granted a monetary order pursuant to section 67 of the *Act* in that amount. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: January 19, 2017

Residential Tenancy Branch