



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 ("application") by the landlord under the *Residential Tenancy Act* ("Act") for a monetary order for damage to the unit, site or property, for authorization to retain the tenants' security deposit, and to recover the cost of the filing fee.

The hearing began on September 26, 2017 and after 27 minutes this matter was adjourned to allow the landlord to re-serve documentary evidence and for additional time for the parties to present their evidence. An Interim Decision dated September 27, 2017 was issued which should be read in conjunction with this decision. The hearing was reconvened on January 4, 2018 and after an additional 39 minutes, the hearing concluded.

Attending both dates of the hearing was the landlord and tenant J.T. (the "tenant"). During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

At the reconvened hearing, the tenant confirmed that they were served with the landlord's documentary evidence and that the tenants did not submit any documentary evidence in response to the landlord's application.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The parties agreed that there was no written tenancy agreement between the parties which I will address later in this decision. The tenant did fill out an application for tenancy however the tenancy was based on a verbal agreement between the parties.

The parties agreed that month to month tenancy began on May 1, 2013 and disputed the day the tenant vacated the rental unit. The tenant claims that she vacated the rental unit on March 8, 2017 while the landlord asserted that the tenant vacated on March 15, 2017.

The parties agreed that during the tenancy monthly rent of \$1,350.00 was due on the first day of each month. The landlord confirmed that the tenant paid a security deposit of \$675.00 which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$876.15 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Paint and lightbulbs	\$165.98
2. Hardwood	\$103.99
3. Hardwood	\$123.34
4. Paint supplies	\$25.13

5. Hardwood	\$102.99
6. Carpet repair	\$12.27
7. Carpet repair	\$228.00
8. Carpet cleaning	\$114.45
TOTAL	\$876.15

The landlord submitted a copy of a condition inspection report dated April 30, 2013. The condition inspection report indicates the agreed-upon condition of the rental unit at the start of the tenancy, however the outgoing portion was not completed due to what the landlord stated was no written by the tenant.

Regarding item 1, the landlord has claimed \$165.98 for paint and lightbulbs that the landlord claimed were missing or not working. This portion of the landlord's claim was dismissed during the hearing as the landlord did not have any photo evidence of the condition of the walls of the rental unit before they were prepped for painting or of missing lightbulbs, and did not complete an outgoing condition of the rental unit. Furthermore, the landlord testified that the paint was 2 months short of four years and that most of item 1 would be fully depreciated as Residential Tenancy Branch ("RTB") Policy Guideline 40 – Useful Life of Building Elements indicates that interior paint has a useful lifespan of 4 years. The tenant did not agree with any portion of the landlord's monetary claim.

Regarding item 2, 3 and 5 the landlord has claimed \$103.00 for item 2, \$123.34 for item 3, and \$102.99 for item 5 which all relate to what the landlord claims was damaged flooring. The landlord referred to the incoming condition inspection report which indicated no issues or damage with the flooring. While the parties disagreed with what work the landlord was permitted to repair during a time period when the tenants were away from the rental unit, the tenant did agree that the landlord was permitted to do one room which included floor work in the rental unit. The landlord referred to three receipts submitted in evidence and photo evidence that was taken at the start of the tenancy and then other photos closer to the end of the tenancy that show damage due to what the landlord described as tenant damage. The before photo shows hardwood floors without scrapes and damage and a fresh coat of varnish. The tenant denied any damage and that the after photos are not damaged. The tenant also claims that there was a large renovation in the rental unit while they were away however the tenant did admit that they did not serve any photos to support that the hardwood floors were not damaged and knew of the claim against them. The receipts submitted in evidence are all related to hardwood flooring repairs.

Regarding item 4, the landlord claimed \$25.13 for paint supplies which was also dismissed as this relates to item 1 which was dismissed during the hearing due to insufficient evidence, without leave to reapply.

Regarding items 6, 7 and 8 all relate to carpet. Items 6 and 7 are for carpet repair, and item 8 relates to carpet cleaning. Item 6 is in the amount \$12.27 for seam tape and includes a receipt in support. Item 7 is from a carpet company in the amount of \$228.00 with a supporting receipt and item 8 is for \$114.45 for steam cleaning with a supporting receipt. The landlord referred to the incoming condition inspection report which indicated no issues or damage to the carpet at the start of the tenancy. The landlord referred to before photos and after photos of the carpets. Some of the photos show blue staining, heavy soiled areas, and other darker and lighter stains on the carpet flooring.

The landlord stated that cleaning was attempted first but that certain areas could not be cleaned and had to be replaced after the tenants vacated. The landlord provided photos taken from different angles to show the alleged damage.

The tenant did not submit any photo to rebut the landlord's evidence. The tenant claims the damage and cleaning claims are false as the photos are not dated and claims it was not them who damaged the carpets. The tenant also testified that the after photos could have been taken after the renovation and not before the tenancy began. The tenant also questioned the landlord as to why there are different dates on the carpet related receipts. The landlord stated that the tenant is dreaming and that he did the work himself and that it took time between cleaning and eventually replacing the carpet when cleaning would not clean certain areas of the carpet and that he minimized the cost to the tenants by only replacing what could not be cleaned. The landlord told the tenant that not all the work can be done in 5 minutes or the same day.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, 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 loss that was 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.

Firstly regarding the condition inspection report, while the landlord and tenant did complete an incoming condition inspection report that holds significant weight in my decision and is required under section 23 of the *Act*, I note that the landlord failed to complete an outgoing condition inspection report as required by section 35 of the *Act*. As a result, **I caution** the landlord comply with section 35 of the *Act* in the future which requires an outgoing condition inspection report to be completed in accordance with section 20 of the *Regulation*.

In addition to the above, section 13 of the *Act* states as follows:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy, the date on which the term ends;
 - (iii.1) if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

[My emphasis added]

Based on the above, I find the landlord breached section 13 of the *Act* by failing to have a written tenancy agreement. Therefore, I **caution** the landlord to comply with section 13 of the *Act* in the future and ensure that all future tenancy agreements are in writing.

Item 1 - The landlord has claimed \$165.98 for paint and lightbulbs that the landlord claimed were missing or not working. As noted above, this portion of the landlord's claim was dismissed during the hearing as the landlord failed to meet the burden of proof and as result, this portion of the landlord's claim is dismissed without leave to reapply due to insufficient evidence. In reaching this finding I note that the landlord failed to provide photo evidence of the condition of the walls of the rental unit before they were prepped for painting or of missing lightbulbs, and did not complete an outgoing condition of the rental unit. Furthermore, the landlord testified that the paint was 2 months short of four years and that most of item 1 would be fully depreciated as Residential Tenancy Branch ("RTB") Policy Guideline 40 – Useful Life of Building Elements indicates that interior paint has a useful lifespan of 4 years.

Items 2, 3 and 5 - The landlord has claimed \$103.00 for item 2, \$123.34 for item 3, and \$102.99 for item 5 which all relate to the landlord's claim of damaged flooring. I have carefully considered the photo evidence and the before and after photos and I find the landlord has met the burden of proof that the tenants damaged the hardwood flooring during the tenancy. I do not accept the tenant's version of events that due to the photos not being dated that they did not cause the damage. In addition, the fact that the tenant confirmed that the landlord was permitted in to work on the flooring supports that the flooring was in a state of disrepair during the tenancy. In reaching this finding, I have considered the receipts submitted in evidence and note that the tenant provided no photos to rebut the landlord's photo evidence. Therefore, I grant the landlord a total of **\$329.33** for items 2, 3 and 5 inclusive.

Item 4 - The landlord claimed \$25.13 for paint supplies which as indicated above was also dismissed as this relates to item 1 which was dismissed during the hearing due to insufficient evidence, without leave to reapply.

Items 6, 7 and 8 – These items all relate to carpet. Items 6 and 7 are for carpet repair, and item 8 relates to carpet cleaning. Item 6 is for \$12.27 for seam tape. Item 7 is \$228.00 for carpet, and item 8 is for \$114.45 for steam cleaning. All three items have supporting receipts. I have considered that the incoming condition inspection report indicates no issues or damage to the carpet at the start of the tenancy. I have also considered the before photos and after photos of the carpets which I find shows blue staining, heavy soiled areas, and other darker and lighter stains on the carpet flooring.

Based on the receipts before me, I am satisfied that the landlord attempted to clean the carpets first and only replaced the areas of carpet that could not be cleaned. I find the tenant's testimony to be unbelievable and vague. The tenant alleges that the photos cannot be relied upon as they are not dated. I disagree. The tenants knew the claim against them and made the decision not submit their own photos to rebut the landlord's claim and I find the before photos show new carpet and that the after photos show carpet that was well worn and stained and damaged by the tenants. Therefore, I am satisfied that the landlord has met the burden of proof and that the tenants breached section 37 of the *Act* which requires the tenants to leave the rental unit reasonable clean and undamaged less reasonable wear and tear. I find that the tenants' use of the carpets was not reasonable wear and tear and was negligent and caused damage. Accordingly, I grant the landlord **\$354.72** which is comprised of item 6 of \$12.27, item 7 of \$228.00 and item 8 of \$114.45. I note that I find it completely reasonable that the receipts are dated on different dates as the carpets were first cleaned and then later replaced as some areas could not be cleaned. Therefore, I find the tenant's suggestion that the dates should have been dated on the same date to be unreasonable.

I **caution** the tenants to comply with section 37 of the *Act* in the future.

As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$784.05** comprised of \$329.33 for items 2, 3 and 5, \$354.72 for items 6, 7 and 8, plus \$100.00 for the recovery of the cost of the filing fee. Pursuant to section 38 of the *Act*, I **authorize** the landlord to retain the tenants' full security deposit of **\$675.00** in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of **\$109.05**.

Conclusion

The landlord's claim is partially successful as described above.

The landlord has established a total monetary claim in the amount of \$784.05 comprised of \$329.33 for items 2, 3 and 5, \$354.72 for items 6, 7 and 8, plus \$100.00 for the recovery of the cost of the filing fee. The landlord has been authorized to retain the tenants' full security deposit of \$675.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of \$109.05. 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.

The landlord has been cautioned to comply with sections 13 and 35 of the *Act* in the future.

The tenants have been cautioned to comply with section 37 of the *Act* in the future.

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 10, 2018

Residential Tenancy Branch