



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of repair to the walls, to replace the vinyl on the deck, to replace a weather strip and for the recovery of the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on June 15, 2014 and ended on September 14, 2017. The monthly rent was \$1,850.00. Prior to moving in, the tenant paid a security deposit of \$925.00. On September 14, 2017, a move out inspection was carried out and a report was filed into evidence. The tenant also provided his forwarding address on that date. The landlord made this application in a timely manner.

The landlord stated that she purchased the unit in 2010 but was not sure of when the unit was built. The tenant stated that he read somewhere that the unit was built in 2008. Based on the testimony of both parties the rental unit was approximately 8 years old at the end of tenancy.

The tenant agreed to having caused a burn mark on the vinyl covering of the deck but the parties could not come to an agreement regarding the cost of repair. The landlord is seeking to have the vinyl on the entire deck replaced and has provided an estimate of \$892.50 as the cost of doing so.

The tenant stated that the burn mark was about six inches in diameter and was caused when a hot pot was placed on the vinyl. The tenant argued that the mark was cosmetic and had not burnt through the vinyl to damage the membrane underneath. The tenant also added that this mark did not warrant replacement of the vinyl on the entire deck. The landlord stated that she had not yet had the work done and was waiting for the outcome of this hearing.

The landlord is also claiming the cost of repair of gouges in the drywall of the stairwell. The tenant agreed that two marks were left on the wall when they were moving their couch. The landlord stated that the stairwell walls were painted just prior to the start of this tenancy. The tenant pointed out that the move in inspection report indicates that there were dings and nail holes in the walls.

The landlord is also claiming for the cost of repair of the stair newel which appears to be damaged in the photographs provided by the landlord. The landlord filed a copy of the estimate of the combined cost of painting and repairing the newel. The landlord stated that she has had this work done but agreed that she had failed to file a copy of the invoice to verify the actual cost incurred. The landlord is relying on the amount of the estimate which is \$619.50 for her claim to repair the stairwell wall and the newel.

The landlord is also claiming the cost of a weather strip that the tenant agreed to cover.

The landlord is claiming the following:

1.	Weather Stripping	\$4.96
2.	Replace vinyl on deck	\$892.50
3.	Repair wall and newel	\$619.50
4.	Filing fee	\$100.00
	Total	\$1,616.96

Analysis

1. Weather Stripping - \$4.96

The tenant agreed to cover the cost of the weather strip.

2. Replace vinyl on deck - \$892.50

The tenant agreed that he had caused the burn mark on the vinyl but stated that the burn did not go right through to the membrane beneath. The tenant stated that the damage was cosmetic. The landlord stated that the burn had damaged the membrane below but agreed that she has not replaced the vinyl even though the tenancy ended more than six months ago and new tenants have moved in since then.

I must decide whether the damage caused by the burn is serious or cosmetic. In making this decision I must consider whether the landlord has met her burden of proof. The onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The only evidence filed by the landlord regarding this claim to replace the vinyl on the entire deck, is a photograph of the burn and an estimate to replace the vinyl on the entire deck. The landlord has not filed sufficient evidence to demonstrate that the burn has jeopardized the integrity of the deck. In addition the landlord has not replaced the vinyl more than six months later even though there are new tenants in the rental unit.

Based on the above I find that the tenant caused the burn mark on the vinyl and on a balance of probabilities I find that it is more likely than not that the burn mark has not compromised the functionality of the deck and that the damage is cosmetic in nature.

The landlord has filed a quotation for the replacement of the vinyl in the amount of \$892.50. I find that while the vinyl has a burn mark, this damage is cosmetic and does not affect the functionality of the deck as is evident from the fact that the landlord has not yet replaced the vinyl. However, the mark has reduced the value of the deck and I will award the landlord an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the documentary evidence and the testimony of both parties, I find that the landlord is entitled to a nominal award for the loss of value of the deck. Accordingly, I award the landlord a minimal award of \$100.00.

3. Repair wall and newel - \$619.50

The landlord stated that she had painted portions of the rental unit just prior to the start of tenancy. However the move in inspection report indicates that certain walls had dings and nail holes in them.

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. The landlord stated that she had painted only portions of the unit prior to this tenancy which started in June 2014. Therefore by the end of the tenancy, most of the interior painting of the rental unit was more than three years old and had outlived most of its useful life.

By her own admission the landlord had only certain portions of the interior painted prior to the start of tenancy and the move in inspection report indicates that there are dings and nail holes on some walls. Accordingly since I have determined that the painting has outlived most of its useful life, I find that the landlord has to bear the cost of painting and repair to the walls.

The landlord has also claimed for the cost of repair to the newel of the stairs. The tenant testified that the damage was due to normal wear and tear.

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises**. In part, this guideline provides as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the photographs filed by the landlord, I find that the damage does not appear to be deliberate but is more in keeping with reasonable wear and tear.

The landlord has filed an estimate for the cost of painting and restoration of the newel combined in the amount of \$619.50. The estimate does not provide a breakdown of costs.

Since I have determined that the landlord must repair and paint the walls at her own cost and I have also determined on a balance of probabilities that it is more likely than not that the damage to the newel is from normal wear and tear, I find that the landlord is not entitled to her claim of \$619.50.

Since the landlord has been successful in proving a portion of her claim, I award her the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim as follows:

1.	Weather Stripping	\$4.96
2.	Replace vinyl on deck	\$100.00
3.	Repair wall and newel	\$0.00
4.	Filing fee	\$100.00
	Total	\$204.96

I order that the landlord retain \$204.96 from the security deposit of \$925.00 and return the balance of \$720.04 to the tenant. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$720.04**.

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: April 17, 2018

Residential Tenancy Branch