



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on September 23, 2017. Rent in the amount of \$2,250.00 was payable on the first of each month. The tenants paid a security deposit of \$1,125.00. The tenancy ended on September 30, 2018.

The parties agreed a move-in and move-out condition inspection report was completed. The tenants did not sign the report as they did not agree with the move-out inspection.

The landlord claims as follows:

a.	Damages	\$3,000.00
b.	Filing fee	\$ 100.00
	Total claimed	\$3,100.00

The landlord testified that the tenants caused damage to the rental unit as there were multiple holes in the walls and there was a chipped door frame.

The landlord testified that the tenants did not cut the front or side grass which had to be cut. The landlord stated that they also left garbage behind.

The landlord testified that the tenant's also broke the faucet and there was dirt on the walls.

The landlord testified that the tenant's also stained the patio concrete, and the stain was not removable when the patio was pressure washed.

The landlord testified that they had a quote in the amount of \$3,000.00 to make the repairs and to remove the garbage.

Filed in evidence are multiple photographs in support of their application.

The tenants testified that they did not cause damage to the rental unit. The tenant stated that they hung pictures on the wall; however, they did not use nails.

The tenants testified that left the rental unit reasonable clean and they removed their garbage. The tenants stated that the landlord's photograph of the garbage and the lawn is not accurate as they were taken before they were finished.

Filed in evidence are multiple photographs in support of the testimony.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, each photograph of the landlords was viewed during the hearing. I find the photographs do not support that the tenants caused damage to the rental unit that was above normal wear and tear.

The holes depicted in the photographs are from the tenants hanging pictures on the walls. This is expected as the tenants are entitled to make the rental unit their home, while it is occupied. This is normal wear and tear.

The photograph of the trim on the window shows that the paint was not applied correctly as you can see the paint lifting in the photograph. This is not from the actions of the tenants.

I also accept the evidence of the tenants that they did cut the grass, although the photographs show it was not cut along the edge of the fence. This is shown in the tenant's photographs.

While the landlord may have been entitled to recover reasonable costs to have the edges cut properly, I find I cannot award any amount as the landlord said it was included in a quote which was not provided.

I also find any garbage the tenants may have left behind was not unreasonable, as it normal household garbage or recycling. The tenants denied that the wood pallet was theirs.

In this case, I question the credibility of the landlord. The landlord was asked several times during the hearing for the cost of the items repaired, as an example the kitchen faucet; however, the landlord said it was included in the quote. The quote was not submitted as evidence, nor was there any proof of money paid.

Furthermore, the rental unit is currently rented and it would be reasonable that the kitchen faucet was repaired. I find it unreasonable that the landlord would not know the actual cost of the repair and to simply claim it was included in a quote is questionable.

I find it more likely than not that the landlord is exaggerating their claim at the expense of the tenants. I find the landlord's has not proven any portion of their claim. Therefore, I dismiss the landlord's entire claim without leave to reapply.

As the landlord has no authority under the Act to retain any portion of the tenants' security deposit, I Order the landlord to immediate return to the tenants their security deposit in the amount of **\$1,125.00**. Should the landlord fail to comply with my Order, I grant the tenants a monetary order for their security deposit.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed without leave to reapply. The tenants are granted a monetary order for the return of their security deposit.

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: February 12, 2019

Residential Tenancy Branch