



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

On February 4, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that he received the Landlord’s documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord entitled to keep the security deposit and pet damage deposit towards his claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 6, 2013, on a month to month basis. The rental unit is a one bedroom basement suite. Rent in the amount of \$700.00 was to be paid to the Landlord by the first day of each month. The

Tenant paid the Landlord a security deposit in the amount of \$350.00 and a pet damage deposit in the amount of \$350.00. The parties testified that the Tenant moved out of the rental unit on October 31, 2018.

The Landlord is seeking compensation for the following items:

Carpet and Linoleum Replacement	\$3,243.45
Materials for Wall and Floor Repairs	\$213.22
Baseboard Heater	\$44.99
Painting Costs	\$1,155.00

Carpet and Linoleum Replacement

The Landlord testified that the Tenant is responsible to damage to the flooring of the unit due to pet urine and odor.

The Landlord testified that he was unable to remove the stains and odor and he had the carpets from the Livingroom and bedroom replaced. The Landlord is seeking to recover the amount of \$1,624.00 for the carpet replacement costs. The Landlord testified that the carpets were at least 10 years old.

The Landlord testified that the linoleum was damaged with a 2 inch by 2 inch burn mark. The Landlord testified that he could not patch the burn mark and had the flooring replaced. The Landlord is seeking to recover the amount of \$1,240.00 for the flooring replacement cost. The Landlord testified that the flooring was at least 10 years old.

In reply, the Tenant provided testimony acknowledging that his dog was responsible for the urine stains on the carpeting. The Tenant testified that he had the carpet cleaned. The Tenant testified that the carpeting was old. The Tenant testified that the condition inspection report shows that there were pre-existing stains on the carpet at the start of the tenancy.

The Tenant testified that the linoleum flooring already had a hole in it which had been previously patched by the Landlord.

The Landlord testified that the Tenant agreed that the Landlord could keep the security deposit and pet damage deposit due to the damage to the carpet and flooring.

Wall and Floor Repairs

The Landlord is seeking to recover costs for the materials to perform drywall repairs and cleaning products. The Landlord is seeking the amount of \$213.22.

The Tenant was asked for a response to the Landlords claim and the Tenant declined to provide a response to this claim.

Baseboard Heater

The Landlord testified that the bathroom baseboard heater was damaged by the Tenant's dog and it needed to be replaced. The Landlord testified that it could not be repaired. The Landlord testified that the heater is approximately ten years old. The Landlord provided a photograph of the heater and a receipt in the amount of \$44.99 for the purchase cost.

In reply, the Tenant provided testimony that his dog was responsible for the damage to the heater. The tenant testified that he was prepared to replace the heater and was informed by the Landlord to not worry about it.

Painting Costs

The Landlord is seeking to recover the amount of \$1,155.00 for the cost to paint the entryway, kitchen and bathroom. The Landlord testified that the walls required painting after the wall repairs were completed. The Landlord referred to his photographic evidence that he submitted. The Landlord referred to the condition inspection report that he submits is evidence of damage to the walls.

The Landlord testified that the rental unit was last painted in August 2013. The Landlord testified that after a small flood in the unit he informed the Tenant on October 25, 2018, to not do any further repairs in the unit.

In reply, the Tenant testified that he tried to repair the drywall in the bathroom by patching and sanding. The Tenant submitted that he finds the amount the Landlord is claiming for painting to be high. He testified that there was very little damage in the bathroom which should not amount to \$500.00.

Security Deposit

The Landlord is seeking to keep the security deposit of \$350.00 and pet damage deposit of \$350.00 in partial satisfaction of the claims.

The Tenant testified that he agreed at the end of the tenancy that the Landlord could keep the security deposit and pet damage deposit.

The Landlord is applying the deposits towards his claims for compensation.

The Landlord testified that in December 2018, the Tenant paid him \$300.00 towards the Landlord's claims.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. When applied to damage(s) caused by a Tenant, or the Tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

Carpet and Linoleum Replacement

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that the useful life of carpets and flooring is 10 years.

I find that the carpet and linoleum in the unit were at least ten years old and were at the end of their useful life at the time they were replaced.

While the carpet and linoleum were at the end of their useful life, I find that they still held some value and I find that the Tenant is responsible for damage to the carpet and linoleum. I find that it is appropriate to award the Landlord nominal damages since there has been no significant loss but the Tenant is responsible for damage.

I award the Landlord \$250.00 for the carpet which includes consideration for the replacement of underlay and \$100.00 for the linoleum.

Wall and Floor Repairs

The Tenant did not wish to respond to the Landlord's claim. I find that the Landlord's claim is unopposed. I award the Landlord the amount of \$213.22 for the cost of materials to perform drywall repairs and cleaning products.

Baseboard Heater

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that the useful life of a heating system is 15 years.

I find that the baseboard heater was at least ten years old when it was replaced. I find that the Tenant's dog caused damage to the heater.

I find that the Tenant is responsible to pay the Landlord for 5/15 of the cost for the new baseboard heater. I award the Landlord the amount of \$14.99.

Painting Costs

The Landlord is responsible for painting the interior of the rental unit at reasonable intervals. Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that the useful life of interior paint is 4 years.

I find that the rental unit was last painted in August 2013. I find that the interior paint was five years old when the tenancy ended.

I also find that the Landlord directed the Tenant to stop making repairs to the rental unit six days prior to the end of the tenancy. I find that the Tenant was not provided a full opportunity to repair the unit.

Since the Landlord is responsible to paint the interior of the unit at reasonable intervals; the interior paint was at the end of its useful life; and the Tenant was not given a full opportunity to make repairs, the Landlords claim for painting costs is dismissed.

Security Deposit

The Landlord applied to keep all or part of the security deposit and pet damage deposit. The deposits will apply to any awards granted to the Landlord.

I find that the Landlord is holding deposits in the amount of \$700.00 and has also received an additional amount of \$300.00 from the Tenant.

I find that the Landlord has established a monetary claim in the amount of \$578.21.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Tenant owes the Landlord the amount of \$678.21.

I authorize the Landlord to retain the amount of \$678.21 from the deposits of \$700.00. I order the Landlord to repay to the Tenant, the amount of \$21.79 from the deposits; and the amount of \$300.00 that the Landlord received from the Tenant in December 2018.

I find that the Tenant is entitled to a monetary order for the balance of \$321.79. This monetary 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 was partially successful with his claims for damage and cleaning costs.

I authorize the Landlord to retain the amount of \$678.21 from the deposits of \$700.00 that he is holding.

I order the Landlord to repay the Tenant the amount of \$321.79 and I grant the Tenant a monetary order in the amount of \$321.79.

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: June 5, 2019

Residential Tenancy Branch