



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence. The tenant stated that the landlord was served with the submitted documentary evidence using regular mail on July 8, 2019. The landlord disputed this claim stating that no documentary evidence has been received from the tenant. The tenant was unable to provide any type of proof of service of the documentary evidence. I accept the testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the landlord's documentary evidence as per section 90 of the Act. I find that the tenant's documentary evidence was not served to the landlord as the tenant has failed to provide sufficient supporting evidence of service. As such, the tenant's documentary evidence is excluded from consideration for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$1,000.00 for damage caused to the rental unit walls by the tenant. The landlord clarified that the tenant vacated the rental unit leaving it with 36 ½ holes in the walls of the living area, both bedrooms and the bathroom by using heavy duty wall anchors. All of the holes required repair and painting. The entire unit was painted with the 2 bedrooms and bathroom requiring new paint as they could not be color matched.

The tenant disputed the landlord's claims stating that he had only caused ½ of the number of holes at approximately 16 holes. The tenant stated that the other holes were caused by previous anchors present when he began the tenancy. The tenant argued that he is not liable for painting of the entire rental unit since the landlord was unable to color match the paint. The tenant also argues that it was possible to color match the existing paint.

The landlord also provided evidence that the rental unit was "in perfect condition" at the start of the tenancy and that it was partially newly painted at the start. The landlord has provided copies of 5 photographs of the rental unit with no damage prior to the start of the tenancy, 12 photographs of the ½ inch holes throughout the rental unit and a copy of the invoice for the repairs and painting.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has claimed that 36 ½ holes were left in the walls of the rental unit at the end of tenancy by the tenant that required repair and the painting of the walls. The landlord incurred a cost of \$1,000.00 as per the invoice for \$1,002.40. The tenant has disputed the landlord's claim arguing that he had only caused 1/2 of the number of holes (16) and that this was a result of the landlord giving him permission to use heavy duty wall anchors. The tenant also argued that the landlord has not provided any evidence of being unable to color match the existing paint. The tenant also argued that he should not be liable for repainting the entire unit as he did not cause all of the holes.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. I found the landlord credible and had no cause to doubt the facts presented by the landlord. The landlord was clear and concise in presenting his facts. In this case, the landlord had provided a copy of an undisputed invoice from a contractor for the repair and paint of 36 ½ holes in the rental unit walls. The tenant confirmed in his direct testimony that he was responsible for using the heavy duty wall anchors on at least 16 of the 36 holes. Although a condition inspection report for the move-in or the move-out were not completed by both parties, I find that I prefer the evidence of the landlord over that of the tenant in the 5 photographs of the condition of the rental unit in contrast with the 12 photographs detailing the holes throughout the rental unit at the end of tenancy. Based upon these factors together, I find that the landlord has established a claim for \$1,000.00 in damages.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$1,100.00.

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: July 16, 2019

Residential Tenancy Branch