



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OMNI PROPERTY MANAGEMENT
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On July 5, 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’s agent (“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 parties testified that they received the 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 the claim?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2017, as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,375.00 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 \$687.50. The parties testified that the Tenant moved out of the rental unit on June 30, 2019.

The Landlord is seeking compensation of \$770.94 for the cost of repairs to the rental unit.

The Landlord testified that a cupboard door was ripped from the hinges and that there were holes left in walls that required eight hours of labor to repair. The Landlord testified that the Tenant attempted to repair holes by filling them with mud; however, the patches needed to be scraped, sanded and painted.

The Landlord is seeking \$440.00 for eight hours of repair at \$55.00 per hour. The Landlord is seeking to recover the amount of \$216.33 for the cost of materials and \$778.00 for the cost of paint. The Landlord testified that the rental unit was freshly painted when the Tenant moved into the unit. The Landlord provided photographs taken of the interior of the rental unit at the end of the tenancy.

The Landlord testified that the Tenant is responsible for the replacement cost of a fixture because the Tenant never reported that it was not working.

The Landlord provided a single invoice dated July 2, 2019, from the Landlords' property management service in the amount of \$770.94. The invoice includes repairs to walls; repair of a broken cupboard door; repair of a broken closet door; replacement of two toilet seats; a light fixture; closet door track and hinge and paint.

Strata Fines:

The Landlord testified that the Tenant was informed that the strata rules of the property require her to reserve the elevator prior to moving out of the rental unit. The Landlord testified that he believes the Tenant signed a Form K document agreeing to comply with all building strata rules. The Landlord testified that he was not present when the tenancy agreement was signed by the Landlord and Tenant. The Landlord is seeking the amount of \$300.00 for a building strata fine. The Landlord did not provide evidence of an actual fine being levied or evidence that fine was paid by the Landlord. The Landlord did not provide documentary evidence of a signed Form K document.

In reply, the Tenant testified that she did not sign a Form K when she entered into the tenancy. She submitted that the Landlord cannot require her to pay for something that is not in her lease. She testified that the Landlord is the third property manager that she dealt with during the tenancy.

The Tenant testified that she did not break a light fixture. She testified that she informed the previous agent of the Landlord, Mr. J.S. that the light fixture was not working. She testified that the light fixture was not actually broken but the light bulbs had burned out.

The Tenant testified that the kitchen cupboard door just fell off. She testified that she did not mis-use the door. She testified that she immediately informed the Landlord who took the position that it was her responsibility. She testified that the Landlord did not even send anyone over to look at the cupboards. The Tenant provided a copy of a letter dated March 15, 2019 that she sent to the Landlord informing the Landlord that a kitchen door cabinet fell off.

The Tenant testified that the bedroom closet door was falling off its tracks at the start of the tenancy. She testified that she showed the Landlord that the door was loose and the Landlord told her it had fallen off before. The Tenant submitted that instead of the Landlord fixing the door a maintenance person from the strata came to fix the door.

The Tenant testified that she spoke to the Landlord about the toilet seat. She testified that the paint on the seat was coming off. The Tenant provided a copy of an email dated September 18, 2018 that she sent to the Landlord informing the Landlord that the toilet and paint on the seat is coming off.

The Tenant submitted that she went to hardware store and got materials to patch up and sand the nicks on the walls. The Tenant submitted that the move out checklist did not mention a requirement to paint.

The Tenant submitted that one of the light bulbs burned out on the day of cleaning the unit.

The Tenant testified that the Landlord failed to conduct a move in inspection at the start of the tenancy. The Tenant provided a copy of an email dated August 10, 2017 sent to the Landlord where she points out repairs needed and deficiencies she has found in the rental unit. The email includes that the lower wall in the den needs to be painted; the master bedroom door is chipped; baseboard in the den needs to be fixed and painted; and the ledge in the den needs paint.

The Landlord present in the hearing was not present in the rental unit at the start of the tenancy. The Landlord did not provide a copy of a move in condition inspection report.

Security Deposit

The Landlord is seeking to keep the security deposit of \$687.50 in partial satisfaction of the Landlords 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.

Sections 23 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit. The legislation also requires that the Landlord complete a condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not conduct an inspection and complete an inspection report in accordance with the regulations.

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an 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.

Under section 62 of the Act, the director has authority to determine disputes in relation to which the director has accepted an application for dispute resolution, and

(b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order.

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

Repair Costs

There is insufficient evidence from the Landlord to prove that the Tenant is responsible for the kitchen cupboard door falling off due to misuse. The Landlord's photograph shows that a hinge attached to a particle board cabinet broke loose. The Tenant reported the issue to the Landlord and the Landlord did not investigate the issue at the time. This claim is dismissed.

With respect to the light fixture, the Landlord's photographic evidence shows that the light fixture is working. It appears that one bulb is burned out in one of the track light fixtures. There is insufficient evidence from the Landlord to prove that the one fixture is not working due to neglect from the Tenant. The Landlord is responsible to repair / replace fixtures that break down in the unit. This claim is dismissed.

With respect to the repair of the closet door, the Tenant testified that the door had previously come off track and was repaired by a handyman. I find that it is more likely than not that the door track hardware needed adjustment due to normal wear and tear. This claim is dismissed.

The Landlord is responsible for painting the interior of the rental unit at reasonable intervals. The Landlord testified that the rental unit had been freshly painted; however, I note that the Landlord did not provide any proof of when it was painted and was not present in the unit at the start of the tenancy. I find that the Landlord's evidence that the

rental unit was freshly painted is unreliable. The Tenant provided the stronger evidence on this point with evidence indicating that parts of the rental unit required painting at the start of the tenancy on August 10, 2017.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that the useful life of interior paint is 4 years. There is insufficient evidence from the Landlord to establish when the rental unit was last painted. Since the Landlord is responsible to paint the interior of the unit at reasonable intervals and the Landlord's evidence that the unit was freshly painted at the start of the tenancy is unreliable; the Landlord's claim for painting costs is dismissed.

With respect to the Landlords claim that the walls needed to be scraped, sanded, and patched, I have reviewed the Landlord's photographic evidence and I find that there are numerous scuff marks on walls and numerous patched areas that required sanding and repair. I find that the Tenant is responsible for the Landlord's cost to complete the sanding and repairs. Since the Landlord's invoice does not break down a specific amount for the labour involved to sand and repair the patches, I find it is appropriate to award the Landlord a nominal award. I award the Landlord \$100.00 for the cost to sand and repair the patches on the walls of the rental unit.

Strata Fine

The Landlord provided insufficient evidence that the Tenant signed a Form K document agreeing to follow strata building rules and pay any strata fines levied to the Landlord. In addition, the Landlord did not prove the loss by providing proof that the Landlord paid a fine.

The Landlords claim for \$300.00 is dismissed.

Security Deposit

The Landlord applied to keep all or part of the \$687.50 security deposit.

I find that the Landlord failed to conduct a move in inspection with The Tenant and complete an inspection report at the start of the tenancy. The Landlord's right to make a claim against the security deposit is extinguished.

The Landlord has established a monetary claim in the amount of \$100.00.

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 \$200.00.

I authorize the Landlord to retain the amount of \$200.00 from the deposit of \$687.50. I order the Landlord to repay to the Tenant, the balance of \$487.50 from the security deposit.

I grant the Tenant a monetary order in the amount of \$487.50. 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 the claims for damage to the rental unit.

I authorize the Landlord to retain the amount of \$200.00 from the deposits of \$687.50.

I order the Landlord to repay the Tenant the amount of \$487.50 and I grant the Tenant a monetary order in the amount of \$487.50.

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: November 6, 2019

Residential Tenancy Branch