



Dispute Resolution Services

Page: 1

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 unpaid utilities, 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.

Preliminary matters

At the outset of the hearing the parties agreed that the outstanding utilities have been paid. Therefore, I find it not necessary to consider this portion of the landlord’s claim.

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 2017. Rent in the amount of \$1,700.00 was payable on the first of each month. The tenants paid a security deposit of \$850.00. The tenancy ended on June 30, 2019.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Damaged blinds	\$ 120.00
b.	Damaged bifold door	\$ 10.00
c.	Damage front cabinet	\$ 160.00
d.	Painting	\$ 1,156.00
e.	Filing fee	\$ 100.00
	Total claimed	\$1,546.00

At the outset of the hearing the tenants acknowledged that they are responsible for the damaged blinds and are not disputing this portion of the landlord's claim.

The landlord testified that the tenant's caused the bifold door to come off the track and they had to replace the door track. The landlord seeks to recover the cost of \$10.00.

The landlord testified that the tenants caused damage to the front of the bathroom cabinet. The landlord stated that they were able to replace the wood. The landlord seeks to recover the cost of the repair in the amount of \$160.00. filed in evidence is a photograph of the cabinet.

The landlord testified that the tenants were required to use small nails when hanging up items in the rental unit and to obtain permission if they were going to be using anything else.

The landlord testified that the tenants caused lots of scrapes, dents in the walls and there were baby gates installed. The landlord stated that the tenants made the attempt to fill the holes; however, it left large white patches on the walls and the repair was not satisfactory. The landlord stated that they tried to colour match the paint; however, they were unable to find the same colour and as a result they had to paint the entire walls where there was damage.

The landlord testified that the rental unit was new 2 ½ years old at the time they had to repaint the walls. The landlord seeks to recover the cost of painting in the amount of \$1,256.00.

The tenants testified that the bifold door fell off the track and they are not responsible for the repair.

The tenants testified that there was already some damage to the bathroom cabinet when they moved in, and the water was hard to keep off the cabinet door causing further damage.

The tenants testified that they fixed any damaged that they caused to walls, which was not done intentional, and they asked the landlord to provide the paint so they could cover up the patches. The tenants stated that the landlord could have provided them with the paint prior to them vacating the premises as the unit was empty for the last two weeks of their tenancy.

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.

The tenants acknowledged that they are responsible for the damage caused to the blinds. I find the tenants breach section 37 of the Act, when they failed to leave the unit undamaged. Therefore, I find the landlord is entitled to recover the cost of the blinds in the amount of **\$120.00**.

I am satisfied based on the evidence of both parties that the bifold door was off the track; however, I am not satisfied that this was caused by the actions or neglect of the tenants. I find it more likely than not that the bifold door came off the track under reasonable use and it is the landlord's responsibility to repair. Therefore, I dismiss this portion of the landlord's claim.

I am satisfied based on the move-in and move-out condition inspection report that the tenants caused damage to the bathroom cabinet. The photographs further support the damage. I find this does not constitute reasonable use, rather it supports neglect. I find the tenants breached the Act when they failed to leave the rental unit undamaged. Therefore, I find the landlord is entitled to recover the cost of repairing the cabinet in the amount of **\$160.00**.

In this case, I am satisfied that the tenants caused some damage to the walls which was beyond normal wear and tear. I am also satisfied that some of the damage was caused from reasonable use.

While I accept the landlord had to repaint the entire walls that had damage; however, that was because the landlord could not colour match the wall. Further, the paint was 2 ½ years old at the time and the depreciated value of 62.5 percent would apply. Therefore, I find a nominal amount is appropriate in the amount of **\$200.00**.

I find that the landlord has established a total monetary claim of **\$580.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the above amount from the security deposit in full satisfaction of the claim and I grant the tenants an order under section 67 of the Act for the balance due of their security deposit. **\$270.00.**

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 is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are granted a formal order for the balance due 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: November 05, 2019

Residential Tenancy Branch