



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, painting, yard work and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. The tenant applied for a monetary order for the return of the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for the loss of income, the cost of repairs, painting, yard work and for the recovery of the filing fee? Is the tenant entitled to the return of the security deposit and the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2018 and ended on July 31, 2019. The monthly rent was \$1,050.00 and was payable on the first of the month. Prior to moving in, the tenant paid a security deposit of \$525.00. The parties met to do a move out inspection on July 31, 2019. A copy of the move out inspection report was filed into evidence.

The landlord stated that the tenant caused damage to the refrigerator door and it would not close properly. On January 19, 2019, the landlord's technician visited the rental unit and did some repair work to the door. The landlord filed a report about the work done.

The report indicated that the hinge of the door was bent and could have resulted from weight placed on the door. The landlord filed an invoice in the amount of \$118.07.

Upon completion of the work, the landlord sent a text message to the tenant informing her that the door was fixed. The tenant returned home and found that the door did not close properly which continued to cause problems with cooling. The tenant informed the landlord of the problem and also hired a technician of her own to take a look at the door. The report from the tenant's technician stated that the refrigerator was too close to the wall and did not allow sufficient space for the refrigerator door to fully open. The technician fixed the door and recommended that the door handle be placed on the other side to prevent further damage. The tenant stated that this service cost her \$112.00.

The tenant provided photographs of damage to the wall from the refrigerator door handle and stated that the damage to the wall existed at the start of tenancy. The landlord agreed that the paint on the wall closest to the refrigerator was chipped prior to the start of this tenancy.

The landlord stated that the front entry door handle was broken. The landlord added that a pin in the locking mechanism was missing which she said probably got loose with use over time and fell out. The landlord stated that the tenant failed to water the trees and 3 trees and a plant died. The landlord is claiming the cost of replacement.

The landlord stated that the tenant put some sticker type items on the walls and when she took them off, the paint was chipped. The landlord is claiming the cost of painting the entire rental unit. The landlord stated that the unit was last painted in 2017. The tenant stated that the rooms did not require painting and she filed photographs of the walls at the end of tenancy. Since the photographs are not close up, the paint chips cannot be seen. The landlord is claiming the cost of painting the rental unit.

The tenant stated that soon after the tenancy ended, the landlord carried out renovations and converted the one-bedroom rental unit to a two-bedroom unit. The landlord agreed that she inspected the unit with a contractor on June 21 during the tenancy and applied for a permit on July 18, 2019. The renovation work was done in August 2019.

The landlord filed a copy of an invoice for the cost of paint. The paint work was done on August 15, 2019

The landlord has applied for the cost of cleaning the laundry, oven and microwave oven. The tenant stated that the washer/dryer were not on wheels and therefore she was not expected to clean under the laundry machines. The tenant filed photographs of the oven which indicate that it was clean.

The landlord is claiming the following:

1.	Refrigerator Door Repair	\$118.07
2.	Staples	\$2.29
3.	Door handle	\$13.39
4.	3 Trees and 1 Plant	\$114.80
5.	Painting and Supplies	\$475.00
6.	Cleaning	\$35.00
7.	Filing Fee	\$100.00
	Total	\$858.55

The tenant is claiming the return of the security deposit and the recovery of the filing fee.

Analysis

Landlord's application:

1. Refrigerator Door Repair

Based on the evidence and testimony of both parties, I find that damage to the wall caused by the refrigerator door existed prior to the start of tenancy. The landlord did not dispute this. The first technician stated that there was damage to the hinges while the second technician found that the refrigerator was too close to the wall which hampered the opening of the door.

Based on the reports of both technicians, the photographs of the damage to the wall and the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the door of the refrigerator was damaged due to its proximity to the wall which obstructed the opening of the door.

I further find that the damage was not caused by the negligent use of the refrigerator by the tenant. I find that it was an ongoing problem that finally resulted in the damaged hinges. The landlord's claim is dismissed.

2. Staples - \$2.29

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the landlord's claim for the cost of printing is dismissed.

3. Door Handle - \$13.39

The landlord testified that the handle of the front entry door was broken and is claiming the cost of repair. The landlord testified that the handle broke when a pin from the locking mechanism fell out. By the landlord's own testimony, she stated that this was due to use over time.

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises.**

In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises). Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant

Based on the testimony of both parties, I accept the tenant's testimony that the damage to the door resulted from wear and tear and not from negligence on the part of the tenant. The landlord's claim is dismissed.

4. 3 Trees and 1 Plant

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises – Property Maintenance.**

The guideline states that generally the tenant is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

The landlord stated that the tenant did not water the trees and they died. The landlord has not yet replaced the trees but is claiming \$114.80 which is an estimate of the cost of replacing the trees and a plant.

In this case the tenancy agreement does not specify that the tenant is required to take care of the trees and based on the above policy guideline the landlord's claim is dismissed.

5. Painting and Supplies - \$475.00

The tenant testified that the landlord had plans to convert the one-bedroom suite to a two-bedroom suite and on June 21, 2019, during the tenancy she brought a contractor to the rental unit to check out the work required to renovate the unit. On July 18, 2019, the landlord applied for a permit to carry out the renovation and stated that the work was done in August 2019.

The tenant filed photographs that show the walls to be in reasonable condition. The landlord filed close up photographs of paint that was chipped. The landlord had the whole unit painted and provided a receipt in the amount of \$475.00 which she is claiming.

Based on the above, I find that the landlord carried out significant renovations that required a permit, immediately after the tenant moved out. I also find that at the end of tenancy the paint on the walls appeared to be in a reasonable condition. In any event, the landlord would have had to paint at her own cost, after she carried out major renovations involving the walls and therefore, she must bear the cost of doing so.

6. Cleaning - \$35.00

The landlord stated that the tenant left the microwave oven, the stove and the laundry in a dirty condition. The tenant stated that she had cleaned the unit but was unable to clean under the laundry machines as they were not on rollers. The tenant filed photographs that support her testimony.

Residential Tenancy Policy Guideline #1 addresses:

Landlord & Tenant – Responsibility for Residential Premises.

This guideline states that an arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Based on the above, I accept the tenant's testimony that the unit was left in a reasonably clean condition and therefore I dismiss the landlord's claim for the cost of cleaning.

7. Filing Fee - \$100.00

The landlord has not proven her claim and therefore she must bear the cost of filing her application.

Prior to the end of the hearing, the landlord hung up, left the conference call and did not return. I waited for five minutes for the landlord to return before I continued with the hearing in the absence of the landlord.

Overall the landlord has not established a claim against the deposits and therefore must return the entire sum of the security deposit to the tenant. Since the tenant is successful in her application, I award the tenant the recovery of the filing fee of \$100.00.

The landlord is currently holding \$525.00 for a security deposit. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for \$625.00 which consists of the security deposit of \$525.00 plus the filing fee of \$100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$625.00**.

The landlord's application is dismissed in its entirety.

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: December 13, 2019

Residential Tenancy Branch