



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

On October 13, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenants attended the hearing. 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.

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

- Are the Landlords entitled to compensation for damage to the rental unit?
- Are the Landlords entitled to keep the security deposit?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on November 20, 2013 as a one-year fixed term tenancy that continued thereafter on a month to month basis. The Tenants were to pay the Landlords monthly rent in the amount of \$2,489.00. The Tenants paid the Landlord a security deposit of \$1,150.00. The parties testified that the tenancy ended on October 29, 2018.

The Landlord is requesting compensation for the following items:

Hardwood Floor Damage	\$5900.00
Wall Damage	\$10,953.00
Painting	As above
Broken Window	\$150.00
Damaged door frame	\$150.00
Missing bicycles	\$400.00

Hardwood Floor Damage

The Landlords are seeking compensation of \$5900.00 due to damage to the hardwood flooring in the rental unit. The Landlords provided seven photographs of the flooring. The Landlord testified that he had a company assess the floor and provide a quote for repair costs. The Landlords have not had the floor repaired and is now living in the rental unit since December 2018. The Landlord testified that the hardwood floor was installed in 2010 and he purchased the home in July 2013.

The Landlords provided a quote dated November 8, 2018 in the amount of \$5,900.00 for sanding and finishing the hardwood floor in the family room; hallway; living room; and dining room.

In reply, the Tenants testified that they agree that there was some damage to the floor in the Livingroom due to the couch scratching the flooring. The Tenants testified that there may have been other minor scratches which is just normal wear and tear. The Tenants testified that the Landlord had extra floor boards that could be used for replacing the scratched boards. The Tenant testified that he received a quote for the repair of the flooring at a cost of \$400.00. The Tenants provided a copy of a quote dated October 17, 2018 from a flooring company that indicates the hardwood boards damaged at the rental unit can be easily and effectively repaired at a cost of approximately \$360.00 plus tax.

The Tenants testified that they signed off on an amount of \$2,200.00 for damage to the flooring.

Wall Damage and Painting Costs

The Landlords are seeking compensation of \$10,953.00 due to damage to walls and painting costs. The Landlord testified that the Tenants are responsible for damage to the interior walls of the unit. The Landlord testified that three holes in the drywall were

repaired. The Landlord testified that the entire interior of the rental unit was repaired and repainted at a cost of \$10,953.02.

The Landlords provided copies of text messages from October 29, 2018 where an unidentified person provides that it will cost \$10,431.45 for labor paint and materials to paint the entire home. When the Landlord was asked whether or not a contractor completed the repairs and painting the Landlord replied "no" the Landlord did the work himself with help from friends. The Landlords provided three photographs showing areas of walls in the unit.

In reply, the Tenants testified they repaired every nick and hole in the walls by filling and sanding the marks before moving out and that the unit was left ready for painting. The Tenant pointed out that while the Landlord alleges there were holes in walls, his quote for painting does not support that there were holes. The Tenant submitted that the useful life of paint is five years. The Tenant submitted that the Landlord took their photographs during a walkthrough inspection prior to the end of the tenancy and before the Tenants made the repairs to the walls.

The Tenants testified that during the move out inspection, the Landlords property manager mentioned no concern with damage to the walls.

Broken Window

The Landlord testified that the Tenants are responsible for damaging a window. The Landlord is seeking compensation in the amount of \$250.00 for the purchase and installation of a new window. The Landlord testified that the window has not been fixed or replaced. The Landlord provided a photograph showing a window with damage to the lower frame area. The Landlords provided a quote from a building supply store for the replacement cost.

In reply, the Tenants testified that they accept responsibility for the cost of \$250.00 to repair/ replace the window.

Damaged Door Frame

The Landlord testified that the Tenants are responsible for damaging a door frame. The Landlords are seeking compensation in the amount of \$250.00 for the repair of the door frame. The Landlords provided a photograph of a cracked/ damaged door frame. The

Landlord submitted that the damage was recorded in the move out condition inspection report.

In reply, the Tenants testified that there was some damage to the door frame and they already signed off to pay \$150.00 for the repair. The Tenants do not agree to pay the additional \$100.00 that the Landlords are claiming.

Missing Bicycles

The Landlord testified that they left bicycles in the back yard of the rental property, and when the Tenants moved out the Landlord discovered that the bicycles were missing. The Landlord testified that the bicycles were 2 -3 years old. The Landlords did not provide a receipt for the cost of the bicycles or an invoice for the replacement cost of the bicycles.

In reply, the Tenants testified that the bicycles were there when the Tenants moved in and they were sitting there rusty and missing tyres. The Tenant testified that they were not rideable, and they sat there for five years rusting away. The Tenant testified that they were trying to be helpful by disposing of the bicycles. At the hearing, the Tenants offered to replace the Landlords' bicycles with bicycles that the Tenants have; however, the Landlord declined the offer.

Security Deposit

The Landlords applied to keep the security deposit of \$1,150.00 towards their claims for damage. The security deposit will apply to any successful awards granted to the Landlords.

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.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

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.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

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 all of the above, the evidence and testimony of the Landlord's and Tenants, and on a balance of probabilities, I find as follows:

Hardwood Floor Damage

The Landlords are seeking \$5,900.00 for the cost to repair hardwood flooring. I have considered the Landlord's testimony and reviewed the Landlords' photographs and I find that there are number of photographs that show scratches and indentations in the flooring. I find that the flooring was approximately nine years old and some of the scratches are attributable to normal wear and tear over a nine-year period of time. The Landlords' evidence of damage is not sufficient to justify the cost to sand and finish all

the flooring in the family room; hallway; living room; and dining room. I find that the Landlords are only entitled to compensation for the areas that were scratched or dented beyond normal wear and tear.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements provides that the useful life of hardwood flooring is 20 years. I have considered the useful life of the flooring. I find that the Landlords are not entitled to recover the full cost of refinishing the damaged areas of flooring. I am mindful that the Tenants provided evidence that the repairs could be made for approximately \$400.00.

After consideration of the above and the testimony of the parties, I find that the amount of \$800.00 is reasonable and fair compensation for damage that is present on areas of the hardwood flooring.

I award the Landlords the amount of \$800.00.

Wall Damage and Painting Costs

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

I find that the interior of the rental unit had not been painted in more than four years. I find that the Landlords are responsible for the costs to paint the home.

The Landlords provided insufficient evidence to establish that the Tenants are responsible for costs to repair three holes in the walls. I accept the testimony that the Landlords took their photographs during a walkthrough inspection prior to the end of the tenancy and prior to when the Tenants made repairs to the walls.

The Landlords' claim for compensation for wall repairs and painting costs is dismissed without leave to reapply.

Broken Window

The Landlords are seeking \$250.00 for the cost to replace and install a window. The Tenants agreed to pay the amount claimed of \$250.00.

I award the Landlords \$250.00 for damage to a window.

Damaged Door Frame

The Landlords are seeking \$250.00 which includes \$150.00 for labor costs to fix a door frame. I have reviewed the Landlords' photograph and I find that the door frame is damaged / cracked where the door hinge is attached to the wall. The Tenants' have accepted responsibility for this damage but only agree to pay the Landlords \$150.00 for the cost to repair the frame.

I have considered the Landlords proof regarding the cost of repair. The Landlords have not completed the repair of the frame and have not provided a quote for the cost of repair.

I find that the Landlords have not provided proof of the actual amount required to compensate for the claimed loss. It is clear that the Landlords are entitled to compensation, but the amount was not proven by the Landlord.

In this circumstance I would normally grant the Landlords a nominal monetary award; however, the Tenants testified that they would pay \$150.00 for the damage.

I award the Landlords the amount of \$150.00.

Missing Bicycles

The Landlords are seeking \$400.00 for the loss of two bicycles.

The Landlord testified that the bicycles were only two to three years old; however, the Tenants lived in the rental home for five years and indicate the bicycles were already present and in poor condition at the start of the tenancy. Perhaps the Landlord meant that the bicycles were two or three years old when the tenancy began in 2013. Nevertheless, I find that the bicycles were left outside and were at least 5 years old when the tenancy ended.

The Landlords have not replaced the bicycles and have not provided a receipt or invoice for the replacement cost.

While I accept that the Tenants believed they were doing the Landlords a favor by disposing of the bicycles, I find that they did not have permission to do so.

I find that the Landlords have not provided proof of the actual amount required to compensate for the claimed loss. I find that the bicycles may have had some residual value; however, the amount has not been established.

In this circumstance, I grant the Landlords a nominal amount of \$20.00 for each bicycle. I grant the Landlords compensation of \$40.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were partially successful with their claims, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I have awarded the Landlords monetary compensation in the amount of \$1,340.00. I authorize the Landlords to retain the security deposit of \$1,150.00 in partial satisfaction of their monetary award. The Tenants owe the balance of \$190.00 to the Landlords.

I grant the Landlords a monetary order in the amount of \$190.00. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlords were partially successful with claims for damage to the rental unit.

I authorize the Landlords to retain the security deposit of \$1,150.00 in partial satisfaction of their monetary award. The Tenants owe the balance of \$190.00 to the Landlords.

I grant the Landlords a monetary order in the amount of \$190.00.

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: March 6, 2020

Residential Tenancy Branch