



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary order for compensation under the Act;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

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.

Issues to be Decided

Are the landlord entitled to monetary compensation for damages?

Are the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to monetary compensation for damages?

Is the tenant entitled to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on April 23, 2019. Rent in the amount of \$3,500.00 was payable on the first of each month. The tenant paid a security deposit of \$1,750.00. The tenancy ended on November 30, 2019.

Landlords' application

The landlords claim as follows:

a.	Shower door	\$1,098.72
b.	Stove repair	\$ 104.95
c.	Coffee Maker	\$ 30.00
d.	Repair to walls and shower (labour)	\$ 200.00
e.	Filing fee	\$ 100.00
	Total claimed	\$1,533.67

Shower door

The landlord testified that that the shower door was new when the tenancy started. The landlord stated that on September 27, 2019, the tempered glass was shattered.

The landlord testified that they were informed by the tenant that the shower door had fallen out of the track on several occasions. The landlord stated that they were never informed that there was any problems with the door prior to this incident. The landlord stated that the tenant was neglectful by not informing them of a problem, and if they had the opportunity to inspect they could have had the door properly repaired which could have avoided the door being broken.

The tenant testified that they clarified with the landlord that it had only fallen off the track once. The tenant stated that when it had previous fallen out it was the lower track; however, when it fell and broke it was from the upper track. The tenant stated that they did not notify the landlord at the time; however, they did have the neighbor come and fix the problem and there were no further issues until it fell and broke. The tenant stated that they believe the door was not installed correctly.

Stove repair

The landlord testified that there were two stove dials broken off the stove. The landlord stated that this was likely due to the tenant being too rough on the appliance. The landlord stated they were never informed during the tenancy that this was an issue. The landlord stated this was not a major repair; however, they had to pay the amount of \$105.00 for the service call.

The tenant testified that they did not damage the stove by neglect. The tenant stated that the dials came off from normal wear and tear.

Coffee Maker

The landlord testified that the tenant was provided a coffee maker. The landlord stated that the coffee maker was not working at the end of the tenancy. The landlord stated they do not know why it stopped working.

The tenant testified that the coffee maker was in the back of a cabinet and never used during their tenancy.

Repair to walls and shower (labour)

The landlord testified that there was damage to the lower bedroom wall by the tenant using some type of adhesive which pulled the drywall paper off the wall. The landlord stated that they seek to recover repair and the shower door repair as they had to pay the amount of \$200.00 for labour.

The tenant testified that they are at a disadvantage as the details of the landlords' application does not indicate any damage to the bedroom wall and as a result of this, they were unable to speak to the occupant of that room.

The tenant testified that they are not responsible for the labour for the door repair as this was an accident due to the door falling off the hinge.

Tenant's application

The tenant's claim as follows:

a.	Cut hand and no shower	\$ 500.00
b.	Damage deposit return	\$1,750.00
c.	Filing fee	\$ 100.00
	Total claimed	\$2,350.00

Cut hand

The tenant testified that they do not really know why they claimed the amount but thought their roommate should be entitled to something for having their hand cut when the shower door broke.

Damage deposit return

The tenant testified that they do not believe they are responsible for any damage and should be entitled to the return of the security deposit.

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, both parties have the burden of proof to prove their respective 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.

Landlord's application

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.

Shower door

In this case the shower door fell off the hinge causing the glass to break. While I accept this was not intentional damage caused by the tenant; however, I find the tenant's action was neglectful when they failed to notify the landlord that there was a prior issue with the door slipping from the track.

While I accept the tenant had someone come in to make the repair, it was still the tenant's responsibility to notify the landlords. This gives the landlords the opportunity to inspect and determine if any other repairs may need to be done. As an example, if the door fell off the lower track, it is only reasonable to conclude the this would have impacted the upper track. I find the tenant is responsible for the shower door.

Therefore, I find the landlord is entitled to recover the cost of the door in the amount of **\$1,098.72**.

Stove repair

In this case, I am not satisfied that the tenant caused damage to the stove from neglect, as this could be from normal wear and tear. Therefore, I dismiss this portion of the landlord's claim.

Coffee Maker

I am not satisfied that the tenant caused damage to the coffee maker from neglect. The evidence of the tenant was that it was not used during their tenancy. There was no evidence that the parties inspected the coffee maker at the start of the tenancy to determine if it actually worked. Therefore, I dismiss this portion of the landlord's claim.

Repair to walls and shower (labour)

I accept the evidence of the tenant that they did not have a fair opportunity regarding damage to the wall in the lower bedroom. The landlords' application provides no details and their monetary simply says wall damage. This does not comply with section 59 of the Act. Therefore, I dismiss this portion of the landlords' claim.

However, As I have found the tenant is responsible for the shower door, I find the landlords are entitled to reasonable cost for installation. As the amount claim is for two items and I have no way to determine the actual labour time, I grant the landlords a nominal amount of **\$50.00**.

I find that the landlords have established a total monetary claim of **\$1,248.72** comprised of the above described amounts and the \$100.00 fee paid for this application.

I authorize the landlords to keep the above amount from the security deposit in full satisfaction of the claim.

Tenant's application

Cut hand and no shower

The tenant had no details as to how they arrived at this amount. Further, roommate are not entitled to compensation under the Act. Therefore, I dismiss this portion of the tenant's claim.

Damage deposit return

As I have authorized the landlords to retain the above amount from the tenant's security deposit in full satisfaction of their claim. I find the tenant is entitled to recover the balance due in the amount of **\$501.28**.

I grant the tenant a formal order for the balance due of their security deposit pursuant to section 67 of the Act. The landlord is ordered to return that amount forthwith to the tenant. Should the landlords fail to comply with my order, this order can be enforced in the Provincial Court (Small Claims).

Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenant is granted a monetary 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: May 27, 2020

Residential Tenancy Branch