



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LUCARNO PROPERTIES LTD & GOODRICH REALTY
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

On June 19, 2020, the Landlord 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 all or part of a security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agents (“the Landlord”) and Tenants attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenants 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 Tenants testified that they received the Landlord’s 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 towards any awards?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in June 2000 and was on a month to month basis. Rent in the amount of \$1,805.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the

amount of \$525.00. The parties provided testimony in agreement that the Tenants moved out of the rental unit on May 30, 2020.

The Landlord is seeking compensation for the cost to have walls repaired in preparation for painting.

The Landlord testified that the Tenants lived in the unit for 20 years. The Landlord testified that five years ago, the interior of the rental unit was painted. The Landlord testified that the rental unit is due to be painted. The Landlord submitted that the Landlord is responsible for the costs associated with repainting the unit; however, the damage to the unit walls was beyond normal wear and tear. The Landlord testified that the Tenants are responsible for the damage and the repair costs.

The Landlord hired a contractor who repaired the walls by patching and sanding the damaged area of the walls. The Landlord provided an invoice for the cost to repair the walls. The Landlord provided photographs showing the condition and state of repair of the walls.

The Landlord testified that a move out inspection was conducted and that the Tenant signed the inspection report agreeing that there was damage. Based on this report, the Landlord withheld \$157.50 from the security deposit of \$525.00. The Landlord returned the balance of the security deposit of \$410.15 to the Tenants on June 12, 2020.

The Landlord testified that they are seeking to recover the amount of \$178.50 from the Tenants for costs above the amount of \$157.50 that they previously withheld. The Landlord is also seeking to recover the cost of the filing fee.

The Landlord testified that they received the Tenants' forwarding address on June 5, 2020 and the Landlords made a claim against the security deposit on June 19, 2020.

In reply, the Tenant testified that he attended a 5 -10 minute move out inspection and signed the inspection report. The Tenant testified that the report did not provide a specific amount that the Landlord was permitted to keep.

The Tenants testified that they asked the Landlord to paint the rental unit in 2015 and the Landlord had the unit painted; however, it was poorly done. The Tenants testified that the paint came off easily.

The Tenant testified that she used tiny nails to hang her artwork which only left tiny holes. She testified that they put putty over the nail holes. She testified that there was a section of damage in the living room that she stopped trying to patch.

The Tenants pointed out that the Landlords invoice for repairs states that there was light patching of drywall. The Tenants submitted that the damage to the walls was not excessive.

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.

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

Wall Repairs

I have reviewed the Landlords photographic evidence. I find that the Landlords evidence shows that the walls were left in a condition beyond normal wear and tear.

I find that the Tenants were required to leave the walls in a reasonable condition at the end of the tenancy. I find that the Tenants are responsible to pay the Landlord's costs to have the walls repaired.

Security Deposit

I agree with the submission of the Tenants that the move out inspection report did not provide a specific amount that the Landlord could retain from the security deposit. I find that Section 38(4)(a) of the Act requires that the amount being retained must be specified. However, I find that the Landlord claimed against the security deposit within 15 days of receiving the Tenants' forwarding address. I find that the Landlord had the right to retain the entire security deposit until the matter could be determined at this hearing.

On June 5, 2020 the Landlord received the Tenants' forwarding address and on June 19, 2020 the Landlord applied to keep all or part of the security deposit. The Landlord returned the amount of \$410.15 to the Tenants prior to this hearing.

I find that the Landlord is holding a security deposit in the amount of \$157.50. I find that the Landlord has established a monetary claim in the amount of \$336.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord's claim was successful. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Tenants owe the Landlord the amount of \$436.00.

After setting off the \$157.50 held by the Landlord against the award of \$436.00, I find that the Tenants owe the Landlord the balance of \$278.50.

I grant the Landlord a monetary order in the amount of \$278.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord was successful with their claim for compensation due to damage to the rental unit walls.

I authorize the Landlord to retain the amount of \$157.50 from the security deposit.

I order the Tenants to pay the Landlord the amount of \$278.50 and I grant the Landlord a monetary order in the amount of \$278.50.

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: September 16, 2020

Residential Tenancy Branch