



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Low Tide Properties Ltd
and [tenant name suppressed to protect privacy]

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 damages to the unit, for an order to retain the security deposit in full satisfaction of the claim and to recover the cost of the filing fee.

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 landlord confirmed they received the tenant’s evidence. The tenant stated they did not receive the landlord’s evidence; however, it might have been returned. The landlord confirmed they sent evidence to the tenant by registered mail. As the tenant was served in accordance with the Act, I will consider all evidence that is presented at the hearing.

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

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 August 1, 2017. Rent in the amount of \$2,747.00 was payable on the first of each month. The tenant paid a security deposit of

\$1,290.00. The tenancy ended on May 31, 2020. The parties agreed that a portion of the tenant's security deposit of \$740.00 has been returned and the landlord is holding the amount of \$550.00.

A move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Cleaning	\$150.00
b.	Damages	\$300.00
c.	Filing fee	\$100.00
	Total claimed	\$550.00

Cleaning

The parties agreed that the tenant gave the landlord permission to keep \$150.00 from the security deposit for cleaning in the move-out condition inspection report.

Damages

The landlord's agent testified that the tenant caused damage to two of the ceilings. The landlord stated that the bedroom ceiling was dirty and had to be repainted. The living room ceiling was damaged as it was scratched and dirty. Filed in evidence are photographs.

The landlord's agent testified that the rental unit was newly painted when the tenant moved into the premises. The agent stated they are only seeking the cost of preparing the ceilings and painting. The landlords seek to recover the cost of \$300.00. Filed in evidence is an estimate and an invoice.

The tenant testified that they did not cause any damage to the ceilings. The tenant stated that when they did the move-in condition inspection the ceiling had some minor scrapes the tenant stated they did not make an issue of this as they believe this was normal wear and tear.

The tenant testified that the rental unit was not painted when they moved in as they moved in right after the previous renter vacated. The tenant stated that the rental unit likely has not been painted in the seven years that the premise has existed.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Damages

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.

Cleaning

The parties agreed that the tenant gave the landlord permission to keep \$150.00 from the security deposit for cleaning. Therefore, I find the landlord is entitled to recover for cleaning the amount of **\$150.00**.

Damages

In this case, I am not satisfied that the landlord has met the burden of proof. While I accept the move-in condition report show that the ceiling were in satisfactory at the start of the tenancy and the move-out condition report shows that there were issue with the two ceiling at the end of the tenancy.

However, I am not satisfied that the rental unit was painted at the start of the tenancy. The move-in condition inspection report simply shows the ceiling was in satisfactory condition. Nothing is noted in the report that the rental unit, including the ceilings were freshly painted. The tenant denied that the rental unit was freshly painted when the tenancy commenced. Therefore, even if the tenant was responsible for the cost of repainting, I cannot determine the useful life of the paint due to insufficient evidence from the landlord.

Further, the landlord submit the following in their application. Invoice for cleaning/prepping for paint work of ceiling/wall damages. The costs totaled \$395 (without tax) but we are only looking to collect the initial estimated amount of \$300.

I am not satisfied as to how the landlord arrived at the amount of \$300.00 and I do not accept that this is a genuine estimate.

The original estimate dated June 9, 2020, provided in evidence shows that estimated cost for preparing the walls and cleaning was \$175.00 and painting was \$425.00. This includes set up & clean up of all surfaces to be painted patching, sanding, taping plates and spotlights removal.

The second invoice was a modification the first showing the cost for preparing the premise was \$420.00 this includes the same details as the first, such as removing wall plates and light fixtures and washing all the walls; however, the painting had significantly increased and was now \$2,800.00, as the entire premise was painted.

This does not support that the premise was painted when the tenancy commenced. The move-out condition inspection report shows the walls were in the same condition as when the tenancy commenced.

Based on the above, I find the landlord has failed to provide sufficient evidence that even if the damage was caused by the tenant that they suffered a loss. Therefore, I dismiss this portion of the landlord's claim. I further decline to award the landlord the cost of the filing fee, because the only issue they were successful on was the cleaning, and this amount had already been agreed upon prior to filing their application.

I find that the landlord has established a total monetary claim of **\$150.00** comprised of the above described amount.

I order that the landlord retain \$150.00 from the security deposit currently held of **\$550.00**, in full satisfaction of the claim. I order the balance due of \$400.00 be returned to the tenant forthwith. I grant the tenant an order under section 67 of the Act for the balance due of their security deposit of **\$400.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court, only if the landlord fails to return the security deposit as ordered.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. I grant the tenant a formal order for the balance 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: October 08, 2020

Residential Tenancy Branch