



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to retain the tenants' security deposit, pursuant to section 38.

"Tenant EYC" did not attend this hearing, which lasted approximately 30 minutes. The landlord, tenant JP ("female tenant"), and tenant JWP ("male tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both the female tenant and male tenant confirmed that they had permission to represent tenant EYC at this hearing (collectively "tenants").

The female tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that all three tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

During the hearing, both parties confirmed that they attended a previous hearing in September 2020, where the tenants were awarded the return of double their security deposit and the filing fee, totalling \$2,800.00, from the landlord, which has been paid. Accordingly, the landlord's application to retain the tenants' security deposit is dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018 and ended on April 30, 2020. Monthly rent in the amount of \$2,700.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing.

The landlord seeks a monetary order of \$4,894.09 against the tenants. The landlord seeks \$131.25 for a door frame repair, \$52.50 for a second door frame repair and painting touch-up, and \$4,710.34 for a partial tile floor replacement. The landlord agreed that the door and flooring were from the original building built in 2004 and had not been replaced prior to or during this tenancy.

The landlord stated that the tenants caused damages to the door frame, it was fixed twice because the first repair was not done properly, and the second repair was cheaper because it was done by a maintenance person living in the building.

The landlord explained that the tenants caused 4 cracks to the floor tiles in the kitchen. She said that due to the covid-19 pandemic, she did not have a chance initially to look for repair service. She stated that she made calls and received an estimate in August 2020, to replace the entire tile flooring extending to the bathroom and lobby for about \$11,000.00, because she was told individual tiles could not be fixed. She maintained that she quoted about \$4,000.00 to the tenants and is not sure what a reasonable amount is between \$4,700.00 and \$4,800.00, as she does not want the tenants to pay for the entire flooring cost.

Both parties agreed that there were 2 previous cracks to the tiles when the tenants moved in, as noted in the move-in condition inspection report, but this was separate from the four additional cracks that were caused by the tenants.

During the hearing, the female tenant and the male tenant agreed that the tenants would pay \$36.75 towards the door frame repair to the landlord. They stated that the door was from the original building built in 2004, 16 years had expired by the year 2020, and there were 4 useful years left for the door, as per Residential Tenancy Policy Guideline 40 which states that the useful life of doors is 20 years. They claimed that 4 of 20 years is 1/5, so $\$183.75/5$ was \$36.75.

During the hearing, the male tenant agreed that the tenants would pay \$600.00 towards the floor tile replacement to the landlord. The female tenant stated that the floor tiles were from the original building built in 2004, 16 years had expired by the year 2020, and there were no useful years left for the tiles, as per Residential Tenancy Policy Guideline 40, which states that the useful life of floor tiles is 10 years. However, the male tenant explained that since the tenants caused the damage to the 4 floor tiles, they would pay \$150.00 per tile, for a total of \$600.00, to the landlord. He maintained that the tenants were not responsible for the kitchen, lobby and bathroom tiles and that they would not pay for the 2 previously damaged tiles noted on the move-in condition inspection report.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$600.00 towards the floor tile replacement cost claimed by the landlord of \$4,710.34 and \$36.75 towards the total door frame repair cost claimed by the landlord of \$183.75. The tenants agreed to pay the above amounts during the hearing.

Accordingly, the landlord is provided with a monetary order for \$636.75 against the tenants.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$4,257.34 without leave to reapply.

I find that the landlord did not sufficiently prove her claims, as she did not go through any of her documents during the hearing. She did not explain photographs, invoices, receipts, or other documents. I notified the landlord during the hearing that she had the burden of proof, as the applicant, to prove her claim. I informed her about the above four-part test during the hearing. I provided the landlord with ample time and opportunity to present her claim during the hearing and to respond to the submissions of the tenants.

The landlord did not indicate when the above repairs were done, when or how she paid the amounts due, or any other such information. It is the landlord's burden to prove these amounts and claims.

I find that the tenants agreed to pay for damages of \$36.75 for the door frame repair. I find that the tenants are not liable for further damages to the door frame, as I find that it is not damage beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1. I find that the damage claimed by the landlord is cosmetic, as the photographs supplied by the landlord show minor damage. I agree with the tenants' calculation of \$36.75 for the door frame repair and I find that this is a reasonable amount. In accordance with Residential Tenancy Policy Guideline 40, the useful life of a door is 20 years, and 16 years has expired since the door is the original one from when the building was built in 2004, so the remaining 4 years is 1/5 of the total cost of \$183.75, leaving a balance of \$36.75 which the tenants agreed to pay and which I have ordered above.

I find that the tenants agreed to pay for damages of \$600.00 for the four cracked tiles at the rental unit that they caused. I find that the tenants are not responsible to replace the landlord's entire floor tiles in the rental unit, as the landlord claimed that they had to replace the whole flooring, not just the four tiles. I agree with the tenants' calculation of \$600.00 for the four tile repairs and I find that this is a reasonable amount. In accordance with Residential Tenancy Policy Guideline 40, the useful life of floor tiles are 10 years, and 16 years has expired since the floor tiles are the original ones from when the building was built in 2004. Therefore, the landlord may have had to replace these floor tiles since the useful life had expired, but I find that since the tenants agreed they caused the damage to the 4 floor tiles, they are responsible to reimburse the landlord, as noted above.

Therefore, the landlord's claims for the remaining cost of the door frame repair of \$147.00 (since I awarded \$36.75 to the landlord towards this cost) and the remaining cost of the floor tile replacement of \$4,110.34 (since I awarded \$600.00 to the landlord towards this cost), are dismissed without leave to reapply.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$636.75 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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: January 12, 2021

Residential Tenancy Branch