



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on September 29, 2020, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was 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 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 tenancy began in 2016. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenant paid a security deposit of \$1,500.00. The tenancy ended on September 1, 2020.

The landlord claims as follows:

a.	Damaged driveway	\$4,200.00
b.	Payment for toilet and ceiling repair	\$ 200.00
c.	Cleaning	\$ 255.00
d.	Painting	\$ 231.96
e.	Filing fee	\$ 100.00
	Total claimed	\$4,986.96

Damaged driveway

The landlord testified that the tenant caused damage to the driveway due to their vehicles continuously leaking gas on the asphalt. The landlord stated that the tenant was responsible to have it repaired.

The landlord stated that they have provided three estimates for repairs, the first was \$3,700.00 plus taxes, the second was \$4,200.00 including taxes and the third was for \$6,042.75. The landlord stated that they are only seeking the amount of \$4,200.00 from the second estimate. Filed in evidence are copies of the estimates.

Filed in evidence is an email thread between the landlord and tenant. I refer only to the email dated November 29, and November 30, 2019, regarding the damage to the driveway. I have only reproduced the tenant's email response that is relevant.

"I think it would be better now if I just move. I said I would fix it, but the harping about it is too much. You wouldn't even know about it if ... downstairs hadn't told you. "

[Reproduced as written.]

Payment for toilet and ceiling repair

The landlord testified that the tenant caused damage to the toilet and to the ceiling below as they had installed something on the toilet, like a seat warmer. The landlord stated that the tenant made the repair; however, they did not pay the person for the repair service. The landlord stated that they paid the amount to \$200.00 to DD to satisfy the amount owed. Filed in evidence is a copy of a cheque.

Cleaning

The landlord testified that the tenant did not leave the premise reasonably clean and that they had to pay DD to clean the fireplace, remove waste, remove items from the linen cloths and clean the appliances. The landlord seeks to recover the cost of cleaning in the amount of \$255.00. Filed in evidence is a copy of a cheque.

Painting

The landlord testified that the tenant was smoking in the rental unit and this discolored the walls. The landlord stated that the last time the rental unit was painted was in 2016. The landlord seeks to recover the cost of painting in the amount of \$231.96. Filed in evidence is an invoice and receipts.

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.

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.

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.

Damaged driveway

In this case, I accept the undisputed evidence of the landlord that the tenant caused damage to the driveway. This is not normal wear and tear; rather neglect from allowing their vehicles to continue to leak fluids onto the driveway causing the damage. The photographs support the damage.

The tenant in the email of November 30, 2019, acknowledge they were responsible for the damage. The damage was not fixed at the end of the tenancy. I find the tenant breached the Act, when they failed to repair the damage driveway.

While the Residential Tenancy Policy Guideline 40 provides that an asphalt driveway has a useful life of 15 years. However, I find in this case, it would be inappropriate to apply the depreciated value as this was clear neglect of the tenant. Furthermore, this was a repair and not a replacement of the item. I find the landlord is entitled to recover the estimate amount for the repair in the amount of **\$4,200.00**.

Payment for toilet and ceiling repair

I accept the undisputed testimony of the landlord that the tenant caused damage to the rental unit and made those repairs; however, they failed to pay for those service. Therefore, I find the landlord is entitled to recover the cost paid for the repairs in the amount of **\$200.00**.

Cleaning

I accept the undisputed testimony of the landlord that the tenant did not clean the fireplace, left some garbage in the rental unit which had to be cleaned and removed. I find the tenant breached the Act, when they failed to clean and remove these items. Therefore, I find the landlord is entitled to recover the cost paid for the cleaning in the amount of **\$255.00**.

Painting

In this case, I accept the undisputed testimony of the landlord that the tenant was smoking in the rental unit; however, I am not satisfied that the tenant is responsible for the cost. This was not special paint to seal the smoke, it was normal paint. The rental unit had not been painted for at least four years. Under the Residential Tenancy Policy Guideline 40, paint has a useful span of four years, I find the useful life of the paint had expired and any amount would be fully depreciated. Therefore, I dismiss this portion of the claim.

I find that the landlord has established a total monetary claim of **\$4,755.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,500.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,255.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 15, 2021

Residential Tenancy Branch