



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 7350 FRASER HOLDINGS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, FFL

Introduction

On December 11, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking a monetary order for damage to the rental unit; to keep the security deposit and/ or pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord's agents and the Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant 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 Tenant testified that she received the Landlord's documentary evidence that I have before me.

The Tenant testified that she never served the Landlord with a copy of her documentary evidence. Since the Landlord has not had an opportunity to consider and respond to the Tenant's evidence, it would be unfair for me to consider it. The Tenant's documentary evidence was excluded.

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 and pet damage deposit towards his claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on August 1, 2020 as a one-year fixed term tenancy. Rent in the amount of \$1,865.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$932.50 and a pet damage deposit in the amount of \$932.50. The Tenant moved out of the rental unit on November 30, 2020.

Painting Costs

The Landlord is seeking to recover the amount of \$550.00 towards costs to re-paint the walls of the rental unit. The Landlord testified that the walls required painting because the Tenant caused damage by using wall anchors and nails to secure items.

The Landlord Ms. S.A. testified that the Tenant was told to not paint the walls herself and to hire a professional painter. She stated that despite this direction, the Tenant patched the walls and painted the walls. The Landlord testified that the painted areas do not properly match the rest of the walls and referred to her photographic evidence. She testified that the rental unit was brand new and had not been previously occupied.

The Landlord's building manager Mr. J.S. stated that he informed the Tenant that painting the unit would be too much work for her to perform and that he did not have paint for her or the color code for paint to match the walls.

The Landlord hired a contractor who repainted the walls for \$989.00. The Landlord provided a copy of the quote for the repainting. The Landlord testified that they paid the contractor \$989.00 and are only seeking to recover \$550.00.

In reply, the Tenant testified that on November 1, 2020 she requested the Landlord provide her with paint to repair the walls of the rental unit. She testified that the Mr. J.S. told her he did not have matching paint and that it was plain white. The Tenant testified that she filled holes, patched, and sanded all the affected areas and repainted the patched areas with the plain white paint.

Security Deposit

On December 11, 2020 the Landlord applied to keep the security deposit and pet damage deposit in satisfaction of the claim for damage. The Tenant testified that she provided the Landlord with her forwarding address on November 30, 2020.

The Landlord stated that the Tenant did not agree that the completed move out condition inspection report fairly represents the condition of the rental unit. However, the Landlord stated that the Tenant did sign the section of the report agreeing to a \$550.00 deduction from the deposit. Due to the conflicting information, the Landlord applied for this dispute resolution hearing.

The Tenant testified that it was not her intention to permit the Landlord to keep any amount of the deposits. She testified that she was feeling pressured by the Landlord and her signature on the condition inspection report agreeing to a \$550.00 deduction was an error.

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 # 1 Landlord & Tenant – Responsibility for Residential Premises provides the following information:

Cleaning:

The tenant is responsible for washing scuff marks, fingerprints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

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

Wall Repair and Painting Costs

I accept the Landlord's photographic evidence before me, along with the Tenant's testimony that she patched holes in the walls of the rental unit. I find that the Tenant is responsible for damage to the walls of the rental unit caused by nail holes and/or anchors/ screws.

I accept the Landlord's testimony that the rental unit was new and had been freshly painted and that the Tenant was the first person to live in the unit.

I find that the Tenant has an obligation and a right to repair damage she made to the rental unit. I find that the Tenant patched holes in the walls of the rental unit and also contacted the Landlord requesting paint for the walls. I accept the testimony of the Landlord and Tenant that the Landlord did not have the paint on hand and did not have a paint code for the Tenant. I find that the Tenant fulfilled her obligation to repair the walls by patching and painting the walls of the rental unit.

I have considered whether or not the Tenant should be held responsible the cost to have the walls re-painted. I find that the Landlord wanted the Tenant to hire a professional painter and not do the repairs herself. I find that there is no requirement under the Act for the Tenant to hire a professional. In addition, the Tenant was not contractually obligated to allow the Landlord to make the repairs.

I find that it is more likely than not that the Tenant followed the information provided by the Mr. J.S. and repainted the walls with plain white paint.

After considering the evidence before me, I find that the Tenant did not breach the Act by failing to repair the rental unit walls at the end of the tenancy. The Landlord's claim to recover painting costs is dismissed.

Security Deposit

On December 11, 2020 the Landlord applied to keep all or part of the security deposit and pet damage deposit. The Landlord applied for dispute resolution making a claim against the deposits within 15 days of the end of the tenancy. I find that the Landlord is holding deposits in the amount of \$1,865.00.

The Landlord's application for a monetary order for damage and to retain the security deposit and pet damage deposit is not successful and is dismissed in its entirety.

I order the Landlord to repay to the Tenant, the amount of \$1,865.00 from the security deposit and pet damage deposit.

I find that the Tenant is entitled to a monetary order for the balance of \$1,865.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was not successful with the claims for painting costs and the Landlord's application is dismissed.

I order the Landlord to repay the Tenant the amount of \$1,865.00 and I grant the Tenant a monetary order in the amount of \$1,865.00.

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: April 21, 2021

Residential Tenancy Branch