



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, the landlord's agent clarified that the specified agent name was entered in error as clerical one. The named landlord's agent's name was duplicated and needs only to remove one portion of it. As such, the landlord's application shall be amended to show the landlord's agent as Sutton Group and not Sutton Group Sutton Group.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via email on March 28, 2021. The tenant confirmed that he did not serve the submitted evidence to the landlord as he states that he was not aware that he had to. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act with the landlord's notice of hearing

package and the submitted documentary evidence, despite the landlord failing to gain the consent of the tenant to serve them via email. I also find that as the tenant failed to serve his submitted documentary evidence as per the Rules of Procedure, that the tenant's evidence shall be excluded from consideration in this hearing. Both parties were advised that despite the tenant's documentary evidence being excluded, this does not preclude the tenant from making any direct testimony references to this evidence. Both parties confirmed their understanding.

During the hearing the landlord clarified that aspects of the landlord's claim had been resolved and wish to lower the claim to \$294.00 from the original \$2,189.73.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a monetary claim of \$294.00 for the estimated cost of re-painting 3 walls which the landlord stated that the tenant had patched many holes. The landlord stated that the 3 walls had holes which were patched by the tenant. The landlord feels the patching of the holes has caused the 3 walls to be "messy".

The tenant dispute the landlord's claim arguing that they should not be responsible for re-painting the 3 walls. The tenant confirmed in his testimony that all holes were patched and sanded down smoothly. The tenant provided undisputed affirmed evidence that they obtained matching paint for the walls and re-painted the affected areas. The tenant argues that the discoloration is normal since the walls were not painted at the same time.

The landlord was asked when the last time the walls had been painted and was unable to answer. The landlord stated that they have been managing the rental property since 2018 and that it has never been painted since they took over management.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed affirmed evidence of both parties that at the end of the tenancy, the tenant had patched, smoothed and re-painted holes that were caused by the tenants during the tenancy. The landlord seeks the estimated costs of re-painting the 3 walls as the landlord feels that they are “messy”. The tenant has disputed this claim arguing that besides patching the holes the tenant had re-painted the affected areas using matching paint. The tenant stated that “of course” the paint would not match exactly as it had been painted earlier.

Residential Tenancy Branch Policy Guideline #16, Compensation for Damage or Loss states in part,

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Residential Tenancy Branch Policy Guideline #40, Useful Life of Building Elements states in part,

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases¹ and determining damages² which the director has the authority to determine under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. Useful life is the expected lifetime, or the

acceptable period of use, of an item under normal circumstances...

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement...

Used items

If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use.

The Asset table for Painting shows a useful life of interior walls for 4 years.

In this case, the landlord's agent has provided undisputed affirmed evidence that since they took over management of the rental unit in 2018 the rental unit has not been painted. Based on this I find that the useful life of painted interior walls has expired on approximately 3 years out of the 4 years allotted for their useful life. Leaving a useful life of 1 year.

However, the landlord has failed to provide sufficient evidence to satisfy me that the 3 walls in which the tenant had patched and painted is "messy" to the extent requiring the re-painting of the 3 complete walls.

Conclusion

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: August 24, 2021

Residential Tenancy Branch