Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit or residential property; and, authorization to retain the tenant's security deposit.

Both the landlords and the tenants appeared for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing materials upon each other.

The landlords gave their proceeding package and evidence to the tenant's current landlord on September 17, 2021. Although this is not proper service under the Act, the tenants acknowledge receipt of the package from their current landlord, that they had the opportunity to review the materials, and they prepared responses to the claims against them. As such, I deemed the tenants sufficiently served pursuant to the discretion afforded me under section 71 of the Act.

I also confirmed that the tenants served their evidence to the landlord, in person, on February 28, 2022 and the landlord confirmed receipt of the tenant's package and the opportunity to review it.

Accordingly, I admitted the materials of both parties and have considered it in making my decision.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation, as claimed, against the tenants for damage to the rental unit and residential property?
2. Are the landlords authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The parties entered into a tenancy agreement that commenced on September 1, 2020 for a fixed term set to expire on June 30, 2021. The tenants paid a security deposit of $750.00 and were required to pay rent of $1500.00 on the first day of every month.

The landlords and tenants inspected the unit together at the start of the tenancy. The landlords prepared a document entitled "Suite deficiencies" rather than a move-in inspection report that complies with the Residential Tenancy Regulations. Nevertheless, both parties executed the document indicating agreement with the assessment of pre-existing damage in the rental unit.

The tenancy ended on June 30, 2021 and on that date both the landlords and the tenants inspected the unit together. The landlords prepared a move-out inspection report consistent with the Residential Tenancy Regulations; however, the tenants did not agree with the landlords assessment of the condition of the property and refused to sign the report.

The tenants did not authorize the landlords to make any deductions from their security deposit and sent the landlords their forwarding address on August 4, 2021. On August 19, 2021 the landlords filed this Application for Dispute Resolution.

Below, I have summarized the landlord's claims against the tenant s and the tenant's response.

1. Driveway damage -- $1974.00

The tenants had been provided a sparking space on the property at the side of the house. The landlords noticed an accumulation of oil on the driveway where the tenant's car parked on April 24, 2021. The landlords instructed the tenants to park on the street until they fixed their vehicle but the tenants objected to that.

The landlords submitted that they also offered a gravel parking spot on the property to the tenants. The tenants denied that to be accurate.

On April 26, 2021 the landlords positioned their vehicles in the driveway so as to block the tenant's ability to park on the driveway. The tenants started parking on the street from that point forward until the tenancy ended.

On April 28, 2021 the landlords had a contractor attend the property and provide a quotation for replacing a 10' x 12' section of driveway where the tenant's vehicle had leaked oil on the driveway.

The landlords acknowledge they have not yet replaced the section of driveway, explaining that the driveway is getting a lot of traffic as construction work has been taking place in the back yard.

The tenants acknowledged that they noticed their car was leaking oil in the few weeks leading up to the landlord pointing it out to them. The tenants are agreeable to taking responsibility for the staining from the oil but are of the position the landlord's claim is excessive. The tenants suggest that black asphalt paint would be a more reasonable remedy to rectify the oil staining.

The tenant pointed out that the landlord had applied a solution to the oil stains and covered it with cardboard and they suggest that the oil stains left after the solution was applied was not that bad. The landlord stated she used "oil lift" on the driveway but it was ineffective and that the oil had saturated through the asphalt which is why it requires replacement.

The tenants also submitted that the male landlord has a vehicle that also dripped oil on the driveway and there may have been pre-existing oil stains in their parking spot.

Both parties provided photographs of the oil stains. The tenants also provided videos of where they parked and of the landlord's vehicle that leaked oil as well. The landlord also provided a copy of the quotation to replace the section of asphalt.

2. Wall damage -- $997.50

The landlords submitted that there were 3 holes in the living room wall, and 2 – 3 holes in the bedroom wall at the end of the tenancy The tenant had applied filler to the holes. The filler was not sanded or painted in one of the rooms; but it was sanded and painted in the other room. The tenants also applied paint to the walls in the living room and bedrooms but the paint colour was not a match. The landlords obtained an estimate from the contractor performing other work at their property to patch and repaint, in the sum of $997.50.

I noted that the landlord provided a copy of an “Invoice” from a contractor, rather than an estimate. The landlords confirmed the contractor performed the work in July 2021 but that they have not yet paid for the work as they are having more work done by the contractor in the back yard of their property.

The tenants acknowledged that they had a TV wall mount in the living room and one of the bedrooms. Upon removing the mounts, the tenants patched the holes with filler. One of the patches was not dry when they returned to sand and paint so they left it as is. The other patch was dry so they sanded and painted the patch. In addition, they painted over scuffs in the walls. The tenants stated they obtained a colour match and purchased a pint of paint to perform the touch ups.

The tenants are of the view that the marks in the walls amount to wear and tear and they took extra care to leave the rental unit in good condition.

Both parties provided photographs for my review. The tenants also provided a video they took at the end of the tenancy. The landlords provided a copy of the “Invoice” to sand and repaint the rental unit.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Upon consideration of everything before me, I provide the following findings and reasons.

1. Driveway damage

The landlords did not reflect the condition of the driveway on the “Suite deficiencies” report prepared at the start of the tenancy and I am of the view that an occasional oil drip is to be expected in a parking spot; however, it was undisputed that the tenant’s car did leak several oil drips on the section of driveway at the side of the house during the tenancy. At issue, is the reasonableness of the landlord’s claim to have the tenant’s liable to pay for replacement of a 10’ x 12’ area of the driveway to rectify the oil drips caused by their vehicle.

When I review the landlord's photographs, I accept that the oil drips on the driveway where the tenants parked was getting worse over a period of months. I also heard that the landlord applied a solution to the oil stains in an attempt to minimize the staining. When I look at the tenant's photographs and video the oil stains appear rather faint especially in comparison to other oil drips on the driveway that appear to be from the landlord's vehicle. Also of consideration is that the landlords have not yet had the section of driveway replaced, and I question whether they will, or if replacement may be done eventually due, in part, to the heavy traffic the side driveway has been experiencing due to the landlord's construction in the backyard. Therefore, I find the landlord's claim for driveway replacement at the tenant's expense to be excessive and unreasonable and I deny their request for compensation of $1974.00.

In recognition the tenants acknowledged responsibility for the oil staining that remains, and that a remedy would be appropriate to address the visible staining that remains, such as driveway paint, I provide the landlords a nominal award rather than dismiss the landlord's claim outright. Accordingly, I provide the landlord's a nominal award of $150.00 for driveway damage.

2. Wall damage

Both parties provided consistent testimony and photographic and video evidence to demonstrate the tenants had patched holes in the walls, followed by touch up painting. In the tenant's video, it is apparent the tenants also touched up small nail holes from hanging artwork, which is considered wear and tear, but I find the larger holes from the TV mounts is beyond wear and tear. However, it is apparent to me that the paint applied by the tenant's was not an exact match the existing paint colour, resulting in obvious touch ups. Therefore, I hold the tenants responsible for some wall damage.

Despite finding the tenants responsible for some wall damage, I find the landlord's claim to hold the tenants responsible for the entire repainting invoice to be excessive and unreasonable for the following reasons. The "invoice" the landlords have yet to pay indicates the contractor was to prime and apply two coats of paint on every wall in the three largest rooms in the rental unit, plus repaint the trim and baseboards even though I did not hear of any damage to trim and baseboards. Residential Tenancy Policy Guideline 1 provides that a landlord ought to expect that a tenant will hang artwork and that small nail holes is considered ordinary wear and tear. Also, the average useful life of interior painting is four years and according to the landlord's own testimony the walls were painted a year prior but the landlords have not made any allowance for the year

that has passed since the unit was last painted. Therefore, I deny the landlord's claim to recover $997.50 from the tenants.

Rather than dismiss the landlord's claim outright for being excessive and unreasonable, I find it more appropriate to estimate a nominal award in recognition the tenants' actions caused some damage. I award the landlords $200.00 for wall damage.

Filing fee and security deposit

The landlords had very limited success in this application and I award the landlords recovery of a portion of the filing fee, or $25.00.

In keeping with all of my findings and awards above, I authorize the landlords to deduct $375.00 [$150.00 + $200.00 + $25.00] from the tenant's security deposit and I order the landlords to return the balance of the security deposit in the amount of $375.00 to the tenants without delay.

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenants with a Monetary Order in the amount of $375.00 to ensure the balance of the security deposit is returned to them.

Conclusion

The landlords are authorized to deduct $375.00 from the tenant's security deposit. The landlords are ordered to return the balance of the tenant's security deposit, in the amount of $375.00, to the tenants without delay. The tenants are provided a Monetary Order in the amount of $375.00 to ensure payment is made.

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: March 09, 2022

Residential Tenancy Branch