



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$600.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover their \$100.00 Application filing fee.

The Tenants, the Landlord, and a translator for the Landlord, F.Y. ("Translator"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB; however, their testimony is evidence before me.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 1, 2021, and ran to October 31, 2022. They agreed that the Tenants paid the Landlord a final monthly rent of \$2,182.25, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,075.00, and no pet damage deposit. They agreed that the Landlord retained \$600.00 of the security deposit to apply to this Application, and returned the remaining \$474.00 to the Tenants. The Tenants said they ended the tenancy to move to a part of the country closer to their family. The Parties agreed that the Tenants vacated the rental unit in mid-July 2022, and they provided their forwarding address to the Landlord a week later.

The Parties agreed that the Tenants assisted the Landlord in finding new tenants, by allowing the Landlord to show the unit to prospective tenants. They agreed that the Landlord found someone right away to rent the rental unit. They agreed that the Landlord has not yet fixed the alleged damage in the rental unit.

The damage claimed consists of four small holes in the balustrade at the top of the stairs. The damage claimed by the Landlord is from a baby gate the Tenants attached at the top of the stairs for the safety of their four young children.

The Landlord said the following about the reason for her claim:

When the Tenants moved out, we discovered damage. After that we asked them to fix it. [The Tenants] did some fixing, but the colour is not right. So, we still have to fix it. So, we found someone to fix. They gave a price in August. Right now, it is not fixed, because we don't know if we can get the money or not.

That damage is there, because the Tenants never asked if they could use the gate for their baby. I know for safety they made the baby gate, but they made the damage and they did a little fix, but they can still see it the colour is different. And

also, we asked someone to find the same colour and repaint the whole thing, so that's why they cost around \$600.00. It is hard wood. The people saying hard wood is hard.

I asked the Landlord if she obtained other quotes for this work, and she said:

We found two – one price, and another they said around this amount. But one didn't want to do the job because it a small job and he doesn't want to come. We just found someone to do the work like a painter - to show the situation and send pictures, and they gave us the price.

The Tenants responded:

First of all, we have four young children, and the youngest was nine months, and a fourth came along the way. Safety was a priority. They knew we had young kids, but it's a given to put safety first.

The only reason the Landlord is aware of the safety gate is because she came to see the fridge – an unrelated matter. She said, 'You have young kids', and this is where we talked. This is about the safety gate.

We're talking about less than 3 mm holes - 0.1 inch holes. Like [the Translator] mentioned, it was not to their liking.

The \$600.00 was a jaw dropper for us, because it's not a quote, there's no invoice for the claim and we didn't have any discussion of them keeping any amount of money. We received the transfer of the \$475.00 [on August 25]. The agents had an open door to visit the tenancy and they said they were surprised at how clean it was. It was much cleaner than when we moved in. We even fixed nail holes from the previous tenants. I find it unfair and unjust, and the amount is completely arbitrary.

I asked the Landlord if she had submitted a copy of the estimate or quote she received for this work. She said:

No, no, because we just asked. When we did the inspection and found the damage the first time, we asked them to fix it, because we don't want to cut the deposit. I always returned security deposit to tenants. But they were rushed to [another city], and said they don't have the time to fix it, so that's why we asked

someone else. After hearing, if the RTB gives the [monetary] order it will follow.

The Tenants said:

There are pictures that the Landlord sent, which speak for themselves. Some are zoomed in. We were not rushed, and the plane was later and we did the move out in due time. We did fix it, but not to their liking. Since the Landlord has seen the gate before, she went straight to the stairs [at the start of the move-out inspection]. For me that's clear that it was targeted. But visually, it's virtually unnoticeable. And it was fixed. There was far more wear and tear around that railing than this. And there's no supporting documents, either; the amount was just thrown to us.

I looked at the Landlord's photographs of the damage to the balustrade. There were scratch marks and slight gouges and four tiny holes. I viewed these from close up shots of the balustrade. However, when considering the more distant photograph, it is difficult to see any of the damage that is visible in the close ups shots – not even the more prominent scratches and gouges.

I asked the Landlord to identify what it is in the photographs for which she finds the Tenants responsible.

The hole is the problem - four holes - because that is hard wood. Our concern is that they can do that, but they have to fix it like before. They used something to colour that hole, but still, it's not good.

The labour is very high. We found someone, and they gave the price around \$600.00, so that's why I am charging this much.

The Tenants said: "The scratches were there before only the holes."

The Landlord said:

I'm not asking them to fix the scratch marks. \$600.00 is pretty high, yes, but some people don't want to do small jobs, but he said he will charge this amount. The labour in [the city] is very high. No one want to do a small job. I don't want the deposit to make money, only someone who knows how to fix it.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or

not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in PG #16:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.”

What stands out to me is that there are scratches and gouges that the Landlord does not attribute to these Tenants; therefore, I find that they were left by another tenant. I find that the scratches and gouges are more noticeable from close up than are the holes. I agree with the Tenant’s estimate that the holes are approximately two millimetres in size.

After considering all the testimony and the Landlord’s evidentiary submissions before me, I find that the holes for which the Landlord has withheld the Tenants’ security deposit amounts to no more than mere wear and tear. If it had been the scratches and gouges that the Landlord was concerned about, I may be more likely to side with the Landlord; however, even these are hardly detectible when one is not looking at a close up photograph.

As a result, I dismiss the Landlord’s claim without leave to reapply. Further, I order the Landlord to return the Tenants’ \$600.00 security deposit in full as soon as possible. In this regard, I grant the Tenants a **Monetary Order of \$600.00** from the Landlord to ensure the return of the security deposit.

Conclusion

The Landlord is unsuccessful in her Application, because she failed to provide sufficient evidence to establish that the Tenants had damaged the rental unit. Rather, I find that the damage about which the Landlord has brought this claim amounts to no more than mere wear and tear.

The **Landlord is Ordered** to return the Tenants’ remaining **\$600.00 security deposit** as soon as possible.

To facilitate this process, I grant the Tenants a **Monetary Order** of **\$600.00** from the Landlord. I trust the Landlord will return these funds as soon as possible, but to be comprehensive, I grant the Tenants this Order.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 10, 2023

Residential Tenancy Branch