



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the rental unit; to keep the security or pet damage deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

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

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the fixed term tenancy started on December 15th, 2009 and was to end on December 15th, 2011; rent is \$1450.00 per month. The tenant paid a security deposit of \$725.00, and a pet damage deposit of \$725.00.

The landlord testified that the tenancy ended August 1st, 2011. He said that he has not completed any of the repairs pending the outcome of this hearing.

In his documentary evidence, the landlord provided copies of the inspection reports. The report on move-in indicates that there were already small dents and scratches on the hardwood floor, but the landlord claims there was additional damage caused by the tenant. He stated that he is claiming only half the quote cost to fix the floor. The landlord included 13 photographs to support this claim, showing in part but not limited to; several small dents on the hardwood floor; a damaged screen door; and a multitude of patched nail holes on various sections of several walls.

The landlord submitted a monetary claim as follows:

- Damage to the hardwood floor:	\$ 425.00 plus tax
- Damage to the screen door:	\$ 145.00 plus tax
- Paint to cover nail holes:	\$ 65.94 plus tax
- Damage to the closet door:	\$ 51.97 plus tax
- Sub-total:	\$ 687.91
- 12% HST:	\$ 82.55
- Total:	\$ 770.46

The tenant testified that the move-in inspection report failed to indicate that the screen door and the closet door were already damaged, and that she did not concern herself with these deficiencies when she moved in. She stated that the price for repairs is excessive, and provided significantly lower prices that she obtained on the internet. She also said that she questioned why she should pay for repairs that have not been completed yet. Concerning the holes in the walls, she stated that she patched them all smooth before leaving, but that she did not have paint to complete the repair.

In her documentary evidence, the tenant provided 19 photographs to support her claim of pre-existing damages, particularly to the hardwood floor as they show the same dents as the ones provided by the landlord. In addition, the tenant identified a damaged bi-fold

door that was not identified on the move-in condition report, as well as pre-existing damages to the carpets and blinds.

The landlord argued that if the condition inspection report was inaccurate the tenant should not have signed it, and that his claim does not include labour but materials only, with the exception of the hardwood floor.

There was no dispute that the landlord deducted the amount of the claimed from the security deposit and returned the balance of \$629.54 to the tenant.

Analysis

In this matter that burden was on the landlord to prove his claim against the tenant.

Section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

The landlord's claim was supported by condition inspection reports completed at the start and the end of the tenancy; however they are of limited value since the move-in report confirmed the existence of damage. Since I must consider reasonable wear and tear as a factor in a two year tenancy, the reports do not allow me to determine the degree of difference between the condition of the unit when the tenant moved in and when she moved out, and to attribute damage that is beyond reasonable wear and tear. Neither did the landlord provide specific evidence in that regard. This is particularly germane to the condition of the hardwood floor; I am not persuaded on the preponderance of the evidence that the landlord proved that the tenant damaged the floor beyond the pre-existing damage and I therefore dismiss this aspect of the claim.

The parties' testimony is at complete odds concerning the damages to the screen door and the bi-fold closet door. Therefore I will rely on the best evidence and accept that since they were not identified in the move-in inspection report, the tenant did cause

damage beyond reasonable wear and tear to a degree. However the items have not been fixed to date and they are still serviceable; therefore while they may have lost cosmetic appeal, I do not find that the landlord ought to be compensated for full replacement value. Accordingly I award the landlord a monetary claim as follows:

- For the damaged screen door I grant the landlord \$75.00.
- I find the amount of nail holes significant; in the absence of receipts I grant the landlord \$35.00 for paint.
- For the closet door I grant the landlord \$30.00.

Conclusion

The landlord established a claim of \$140.00. Since he was partially successful, I grant the landlord \$25.00 as partial recovery of the filing fee for a claim totalling \$165.00. Since the landlord kept \$770.46 from the tenant's \$1450.00 security and pet damage deposits, pursuant to Section 72 of the Act, I set off the amount awarded to the landlord against the tenant's security deposit and grant the tenant a monetary order for the balance of \$505.46. This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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: November 16, 2011.

Residential Tenancy Branch