



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on September 4, 2019. I find that the tenants have been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began in 2016. Current rent in the amount of \$1,050.00 was payable on the first of each month. The tenants paid a security deposit of \$525.00. The tenancy ended on August 15, 2019

A move-in and move-out condition inspection report was completed. The landlord stated that the tenants were given the originals as they wanted to copy them. The landlord stated the tenants did not return the originals to them.

The landlord claims as follows:

a.	Damage to drywall, repainting and replace flooring	\$2,700.00
b..	Filing fee	\$ 100.00
	Total claimed	\$2,800.00

The landlord testified that the tenants repainted the rental unit without their consent. The landlord stated the colour was nice; however, it was not painted properly. The landlord stated they had to repaint the unit.

The landlord testified that there was some damage to the drywall as there were several large holes. The landlord stated one hole was approximately 12 x 12 inches. The landlord stated that they had to have the drywall repaired. Filed in evidence are photographs showing damage to the drywall.

The landlord testified that the laminate floor was damaged as there were broken pieces and water damage. The landlord stated that the flooring was five years old at the time they were replaced. The landlord stated they replaced the laminate flooring with tile as they were able to find tile that cost less than the laminate flooring. The landlord stated the cost of the tile was \$533.12.

Filed in evidence are receipts for the above repairs and materials. Photographs, and emails, in which the tenants acknowledged damage within the suite.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the unopposed evidence of the landlord that the tenants caused damage to the drywall and that they painted the rental unit without the consent of the landlord. I find the tenants breached the Act when they failed to repair the drywall and repaint the unit to its original colour.

I accept the unopposed evidence of the landlord that the tenants caused damage to the laminate flooring as there were pieces broken and water damage. I find the tenants breached the Act when they failed to repair the flooring at the end of the tenancy.

Based on the above, I find the landlord is entitled to recover the labour, cost of paint materials in the amount of **\$3,263.34**. This is support with receipts.

However, the laminate flooring was approximately five years at the time of replacement.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the flooring had a useful life span of 20 years. The flooring was five years old at the time of replacement. I find the landlord is entitled to the depreciated value of 75 percent. The evidence of the landlord was it cost \$533.12 to replace the flooring. Therefore, I find the landlord is entitled to compensation for the depreciated value of replacing the flooring in the amount of **\$399.84.**

I find that the landlord has established a total monetary claim of **\$3,763.18** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$525.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,238.18.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 02, 2020.

Residential Tenancy Branch