



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order totaling \$1820.50, for damages and outstanding rent.

Background, Evidence & Analysis

I deal with each portion of the claim below:

Money deducted off the rent in October 2008-----\$73.50

The landlord claims that the tenant deducted money off the rent in the month of October without the authority to do so.

The tenant claims that they had emergency repairs to the plugged tub and therefore had the right to deduct this rent.

In a previous hearing I found that the tenant did not give the landlord sufficient time to deal with the tub before having the repair done herself. Therefore it is my decision that the tenant must pay this outstanding rent of \$73.50.

Wall repair and repainting-----\$500.00

The landlord originally claimed that the tenant left the wall in the rental unit in need of repair and repainting because she had done an improper repair and had painted glossy paint over mat finish paint. However at the hearing the landlord also claimed that all the walls had to be painted due to a smell in the rental unit which she believes to be from smoking of some kind.

The tenant testified that the only wall repair that she did was done professionally and that the other marks and gloss paint were there when she moved into the rental unit.

The tenant further stated that there was never any smoking of any kind in the rental unit.

The move in inspection report does not mention any gloss paint patches on the walls and therefore I find it unlikely that they existed at the beginning of the tenancy and therefore it is likely that this was done by the respondent.

I will therefore allow a portion of the claim for painting. I will not allow the full amount claimed because the applicant has not supplied any independent estimates of the cost of repair and repainting the walls.

I will allow 1/3 of the amount claimed-----\$167.00

Replace damages bathtub-----\$900.00

The landlord claims that the tenant damaged the surface of the tub during the tenancy by scrubbing too hard and as a result the tub will have to be replaced, at a cost of \$900.00.

The tenant denies damaging the tub and testified that it was in good condition when she moved out. She further stated that she never used abrasive cleansers on the tub.

The move in inspection makes no mention of scratches on the tub, and the move out inspection states that the tub is scratched. The tenant admits that she participated in the move out inspection but that she refused to sign it as she did not agree with what the landlord had written down as damage.

The move out inspection form has a section where the tenant could have written down any disagreement with what was written on the form; however she failed to do so and instead claims that she just refused to sign it. Unfortunately for the tenant, I accept the move out inspection as written as the tenant did not write down any disagreement at the time.

I therefore allow a portion of the landlords claim for replacing the tub.

Again the landlord has supplied no independent estimates of the cost to replace the tub.

I therefore will only allow 1/3 of the amount requested-----\$300.00

Replace toilet roll holder-----\$10.00

The landlord testified that a toilet paper holder had been removed by the tenant and therefore the landlord wants \$10.00 to replace it.

The tenant testified that the holder had fallen off under normal use.

The landlord has not shown that this damage was not from normal use and I therefore dismiss the claim for replacing the toilet roll holder.

Carpet stains-----\$90.00

The landlord testified that the tenants left stains on the carpet and the landlord therefore requests \$90.00 for cleaning costs.

The tenants admit that they stained the carpet but believe that it is normal wear and tear because the stains were done accidentally and not willfully or negligently.

The tenant has admitted that they caused the stains and therefore I allow the landlord reasonable claim for cleaning. It does not matter that they stains were cause accidentally they were still caused by the tenant and the tenant is therefore still liable for the damage.

Amount allowed for carpet staining-----\$90.00

Linoleum damage-----\$60.00

The landlord testified that the tenant damaged the linoleum during the tenancy.

The tenant denies damaging the linoleum and claims that the damage existed when she moved in.

It is my decision that I will not allow the claim for linoleum damage because the move in inspection form has been crossed over on the section for the flooring and I am therefore unable to determine the condition of the flooring from that form. Therefore it is just the applicant's word against that of the respondent. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Missing blind-----\$37.00

The landlord claims that the blind in the dining room is missing.

The tenant stated that the blind broke under normal use and was normal wear and tear.

I deny the claim for the missing blind as I accept that it broke under normal use and is therefore normal wear and tear.

Oil stains on driveway-----\$150.00

The landlord testified that the tenant's vehicle left oil stains in the driveway and therefore the landlord is requesting an order for the cost of removing the stains. The landlord did admit; however that there were at times other people parking in the driveway but she believes the stains came from this tenant because she saw some oil in the driveway after the tenant moved her vehicle.

The respondent denied causing the oil stains and claims that her vehicle does not leak oil. The tenant testified that there were often other vehicles parked in the driveway and that the stains could have come from any one of them.

It is my decision that the landlord has not met the burden of proving that the oil stains were caused by the respondent's vehicle and I therefore dismiss the claim for removing the oil stains.

Conclusion

I have allowed \$630.50 of the applicants claim. I further ordered that the respondent bear the \$ 50.00 cost of the filing fee paid for this hearing.

Total amount allowed-----\$680.50

I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$ 483.53

I further Order that the Respondent(s) pay to the applicants the following amount:

\$ 146.97

Dated: January 29, 2009