



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for damage to and cleaning of the rental unit, for compensation under the Act and the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim and recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing a preliminary issue was dealt with, involving the named respondents. The Landlord had named the Tenant's boyfriend as a tenant and respondent in his Application. The boyfriend was not on the tenancy agreement, nor had the Landlord added the boyfriend in the prior hearing. Therefore, I order that the Application and style of cause be amended to exclude the boyfriend.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Tenant took possession of the rental unit on or about March 1, 2005. The rental unit is a home and property on one of the Gulf Islands. The Landlord received a security deposit of \$350.00 from the Tenant on March 1, 2005.

There was a prior hearing between these parties on October 15, 2009, in which the Tenant was ordered to vacate the rental unit on November 30, 2009. The Tenant and the Landlord made an agreement that the Tenant could stay in the rental unit longer, until December 6, 2009. The outgoing condition inspection report was performed on December 13, 2009. The time to vacate the rental unit was extended since there was a chimney fire in the rental unit the Tenant intended to move into.

The Landlord scheduled and provided two opportunities to the Tenant to participate in the outgoing condition inspection report, however, the Tenant did not participate in the outgoing condition inspection report. The Landlord further testified he did not receive a forwarding address in writing from the Tenant.

The Landlord claims he has incurred, or will incur, substantial costs to clean and repair the rental unit due to the alleged condition it was left in by the Tenant.

The Landlord claims as follows:

a.	Rent for December 2009	728.00
c.	Photographs and registered mail for evidence	78.83
d.	Cleaning 143 hours @ \$20.00 per hour	2,860.00
e.	Cleaning supplies	188.85
f.	Repair materials	310.38
g.	Estimate to replace countertops & cabinet doors	3,384.35
h.	Estimate to replace picnic table	225.99
i.	Legal fees from lawyer	614.60
j.	Filing fee	100.00
	Total claimed	\$8,917.70

The Landlord testified that on December 13, 2009, he attended the rental unit property and could not get into the rental unit as his keys did not work. He alleges the Tenant changed the locks and did not provide him with the new keys.

I note the Landlord also testified, at a different time in the hearing, that on December 13, 2009, he attended the rental unit and the carpet was still being cleaned.

The Landlord alleges that the Tenant replaced light bulbs in the rental unit with dimmer bulbs. He testified that when he entered the rental unit it required major cleaning. He enquired with a cleaning company and learned they charged \$45.00 per hour for cleaning.

The Landlord testified that although he had planned on renting the property for a while longer, he had decided to fix up the rental unit and put it on the market to sell.

The Landlord testified that he had to replace the linoleum floor because the Tenant alleged gouged the floor. He alleges the Tenant caused damage to the kitchen countertop and cabinets and they need to be replaced. He testified that the lino, cabinets and countertops were about 14 years old.

The Landlord provided a list of time he spent cleaning the rental unit, which totaled some 143 hours. For example, he sets out that he spent 10 hours cleaning the electric stove and 2 hours dismantling and cleaning the glass in the stove door. He requests payment of \$20.00 per hour for the cleaning.

The Landlord provided pictures, receipts, invoices and estimates for the costs, in support of his claims. The Landlord testified that some of the pictures he took of the rental unit were shot around December 15, 2009.

In reply, the Tenant testified that she was unable to leave the rental unit on November 30, 2009, and have it cleaned as well. The Landlord and her agreed she would have some extra days to clean the rental unit. She testified and submitted evidence she was delayed moving into her new rental unit due to a fire that occurred there.

The Tenant testified that she had cleaned the rental unit to a reasonable condition, as required under the Act. The Tenant took photographs of the rental unit after she vacated, and returned in early July of 2011, to take photographs of the yard.

The Tenant testified that she thought the time spent cleaning the rental unit appears to be excessive. She testified she felt the property was left in reasonable condition, with some wear and tear. She alleges the property was built in 1991 or 1992, and homes on the island age more quickly due to the weather conditions.

The Tenant alleged that some of the Landlord's photographs were actually used in the first hearing, which occurred in October of 2009, and do not accurately represent the rental unit condition at the end of the tenancy, in December of 2009. She also testified that some of the Landlord's photographs are of items that they did not use during the tenancy and were not record on the incoming condition inspection report, such as an outhouse on the property. The Tenant also testified that the locks were not changed in the rental unit.

In support of her claims the rental unit was cleaned to a reasonable state, the Tenant also submitted letters from people who assisted her in cleaning the rental unit and moving out of the unit.

In final reply, the Landlord suggested that we use a magnifying glass to examine the Tenant's pictures. He testified that using a magnifying glass would reveal more dirt in the Tenant's photographs. He alleges the Tenant tried to cover up problem areas in her photographs.

Analysis

Based on the above, the testimony, evidence, photographs and on a balance of probabilities, I find that the Tenant failed to pay rent to the Landlord for December of 2009, and overheld in the rental unit. The Landlord did not plan to have renters in the unit following the Tenant, and therefore, I find he is entitled to prorated rent to December 13, 2009, in the amount of \$306.00

I further find that the Tenant failed to clean some portions of the rental unit, as described below, to a reasonable standard as required under the Act. However, I also find the Landlord has charged for an excessive amount of time in much of his cleaning costs and failed to prove much of the cleaning was required due to the Tenant.

When making a monetary claim under a tenancy agreement or the Act, the party making the allegations (here the Landlord) has the burden of proving their claim.

Proving a claim requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The Tenant is required under section 37 of the Act to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. I note the Tenant is not required to clean the rental unit to a condition to improve the Landlord's opportunity to sell the rental unit.

I find that the Landlord has proven the Tenant failed to clean the floor beneath the stove and fridge, and the exhaust vent above the stove. I allow the Landlord five hours for this, in the amount of \$100.00. I allow a nominal amount, \$20.00, for cleaning supplies.

I find that the Landlord was unable to prove, or did not supply sufficient evidence to prove, the Tenant failed to clean any other portion of the rental unit to a reasonable condition. I further find that the amount of time claimed for much of the cleaning was

excessive, and indicates the Landlord did not mitigate his losses as required under the Act.

I did not find the Landlord's testimony regarding when he took the pictures of the rental unit to be reliable. This does not mean I found the Landlord was intentionally untruthful, but rather, that he did not accurately record the dates of the photographs he took. I note that to recall the dates of events that occurred some 19 months ago, is difficult at the best of times. This inaccuracy harmed the Landlord's evidence.

The photographs of the Tenant appear to be more accurate in regard to the time they were taken and the condition of the rental unit at the end of the tenancy. Nevertheless, the onus to prove the claim is on the Landlord and I find he failed to prove or provide sufficient evidence against the Tenant for much of his cleaning claims.

I further find that the Landlord's claims for the linoleum and kitchen countertops and cabinets should be dismissed. I do not find he proved the Tenant damaged the floor, and in any event it is beyond its useful life expectancy. I find the Landlord should have repaired the countertop. I also do not find the Tenant damaged the kitchen cabinets. I find it more likely the Landlord would like these replaced in order to increase the value of the rental unit to sell the property.

I dismiss the claim for the picnic table as the Landlord led no evidence on this item. I also dismiss the claim for the door lock, as the Landlord did not verify the cost of replacing the lock.

I dismiss the claims for ferry costs, as it was the Landlord's choice to not live near the rental unit, and this is not a cost for the Tenant to bear.

There is no authority under the Act to award legal fees and this claim is dismissed. Likewise, the cost of photographs and registered mail are not compensable under the Act, as these are costs to prepare for the case.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$451.00** comprised of the above awarded amounts and \$25.00 as a portion of the fee paid for this application. I do not award the whole fee, as the Landlord has had limited success in his Application.

I order that the Landlord retain the deposit and interest of **\$362.39** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$88.61**.

This order may be filed in the Provincial Court (Small Claims) 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: July 29, 2011.

Residential Tenancy Branch