



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 or cleaning of the rental unit, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to 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.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on June 1, 2009, with the parties entering into a written, standard form tenancy agreement. The monthly rent was set at \$1,550.00 per month and the Tenant paid the Landlord a security deposit of \$775.00 on or about June 1, 2009.

On May 2, 2011, the Tenant gave a late notice to end tenancy to the Landlord with an effective date of May 31, 2011.

The Tenant vacated the property, however, the Landlord is alleging losses due to costs to repair the rental unit because of the condition it was left in by the Tenant.

The Landlord claims \$56.54 for replacing light bulbs, \$210.20 for paint and supplies to paint the interior of the rental unit, \$50.00 for a shortage in rent payment, \$51.33 for late move out and \$50.00 for the filing fee for the Application.

The Landlord has also claimed for the cost of providing photographic evidence and parking. I dismiss these, as they are not recoverable under the Act since they are costs associated with the Landlord proving his case.

The Landlord testified and submitted evidence that he did not complete an incoming condition inspection report for the rental unit. He testified and submits that the Tenant was not available for an outgoing condition inspection report on May 31, 2011, when she moved out. The rental unit was not ready for the next renters to occupy until June 1, 2011.

The Landlord claims the Tenant left the rental unit with many screw and nail holes in the walls. He alleges these had to be filled and painted.

The Landlord also claims the Tenant left the rental unit without replacing many burnt out light bulbs. Furthermore, the Landlord alleges the Tenant replaced some bulbs in the vanity lights in the bathroom with incorrect size or power bulbs.

The Landlord testified that the rental unit was very dirty when the Tenant left.

In support of his allegations the Landlord provided a move out condition inspection report from the renters who vacated the rental unit in May of 2009, and a written statement ostensibly from the renters who took possession of the rental unit on June 1, 2011, after the Tenant vacated.

The renters who took possession of the rental unit after the Tenant wrote that there were many deficiencies with the unit when they moved in. They recount the nail and screw holes in the walls, the cleaning that had to be done, as well as about 12 other items, some of which the Landlord has not claimed for. At the end of their statement the new renters write, "At present, we have rectified most of these deficiencies ourselves, though we feel they were not our responsibility as tenants." [Reproduced as written.]

In reply, the Tenant agreed that she owes the Landlord \$100.00 for the replacement of an access fob and \$50.00 for a shortfall in one rent payment.

The Tenant denied all other claims of the Landlord.

The Tenant testified that no condition inspection report was performed at the outset of the tenancy. She testified that many of the problems the Landlord is alleging were already in the rental unit at the time she took possession. She testified that there were different sized and power light bulbs installed when she moved in. She also testified that there were many nail and screw holes in the walls when she moved in.

The Tenant testified about an incident where the Landlord entered the rental unit without giving her the 24 hours notice, as required under the Act. She alleges she became concerned and called the police, due to his illegal entry.

The Tenant testified that she left the rental unit around 2:30 p.m. on the afternoon of May 31, 2011. She left a friend to clean the rental unit. According to the evidence submitted, it appears the Landlord had possession of the rental unit sometime after 5:30 p.m. on May 31, 2011.

Analysis

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

I allow the Landlord \$160.00 from the security deposit to pay for the \$100.00 key fob, \$50.00 short rent payment and \$10.00 for overholding past 1:00 p.m. on the date the tenancy ended. I allow the Landlord to retain \$15.00 towards his filing fee, as he met with limited success in this Application.

I deny all the other claims of the Landlord for the following reasons.

When making a claim for damages 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 in damages 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.

I find the Landlord had insufficient evidence of the condition of the rental unit when the Tenant took possession, and therefore, he was unable to establish what damages the Tenant were responsible for during the tenancy. I find the outgoing condition inspection report from previous renters does not sufficiently establish the condition of the rental unit when the Tenant took actual possession.

The Act requires that the Landlord and the Tenant perform these reports together, in order that both parties agree to the condition of the rental unit at the start and at the end of the tenancy. In any event, by failing to perform an incoming condition inspection report the Landlord has excluded himself from claiming against the security deposit under section 24 of the Act. It was the Landlord who first breached the Act in this tenancy.

I further find that the Landlord has failed to verify the actual loss or damage claimed.

The statement provided by the renters who took occupation of the rental unit after the Tenant, "... we have rectified most of these deficiencies ourselves, though we feel they were not our responsibility as tenants...", leads me to conclude that the Landlord has not performed all the work he claims to have. It appears he left most of the work for the new renters to perform, although it is not possible to determine which work was performed by either the Landlord or new renters, based on the evidence before me.

If the Landlord compensated the new renters for doing this work, he did not include that loss with his claim, which would have been his actual loss. This is further supported by the fact that the Landlord made no claims for cleaning the rental unit. This leads me to conclude that the Landlord failed to verify his actual loss and most of his claims must fail.

I find that the Landlord has established a total monetary claim of **\$175.00** comprised of \$100.00 for the key fob, \$50.00 for a shortfall in rent, \$10.00 for overholding and \$15.00 towards the fee paid for this application.

I order that the Landlord may retain \$175.00 from the deposit of **\$775.00** in full satisfaction of the claim and I order the Landlord under section 67 to return the balance due of **\$600.00** to the Tenant immediately.

I have issued the Tenant an order in those terms and it 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 except as 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: September 20, 2011.

Residential Tenancy Branch