



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, damage to the unit site or property, compensation for damages and losses, the filing fee, and an order to keep the security deposit.

The Landlord provided affirmed testimony that they served the Tenant, AR, by registered mail on January 30, 2012 with the Application for Dispute Resolution and Notice of Hearing.

Tenant AR provided affirmed testimony at the hearing confirming the Landlord's testimony regarding service of the Application and Notice of Hearing.

I find that the Tenant, AR, was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

JM attended the hearing and provided affirmed testimony that he was informed by AR about the hearing, however he stated that he has not been served with the Application or the Notice of Hearing.

All parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

On the Landlord's Application they have only listed Tenant AR and not JM. The Landlord stated that he had a tenancy agreement with AR and JM, however she stated she did not have a forwarding address for JM, as a result she has not served JM with the Application.

As a result, I will only be naming Tenant AR on any orders that may result from this decision. I refer to AR as the Tenant in the balance of this decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to a monetary order for unpaid rent, damage to the unit site or property, compensation for damages and losses, the filing fee, and an order to keep the security deposit?

Background and Evidence

The parties agree that they had a written tenancy agreement which commenced on August 01, 2010 for a fixed term to end August 01, 2011. The Landlord provided a copy of the tenancy agreement into evidence. The parties agree that the monthly rent was \$1,100.00 due on the first of each month. The parties agree that the Landlord received a security deposit of \$550.00 from the Tenant at the start of the tenancy. The parties agree that the tenancy ended when the Tenant moved out of the rental unit for April 30, 2011. The parties agree that a move in and move out condition inspection were done with participation of both parties. The parties agree that the Landlord was not provided with a written forwarding address until the Tenant sent the Landlord the letter of January 24, 2012 requesting return of the security deposit. The Landlord did not return the security deposit. The Landlord their Application for dispute resolution on January 27, 2012, within less than 15 days of receiving the Tenant's forwarding address.

Liquidated damages

The Landlord stated that the Tenant owes her \$550.00 in liquidated damages for breaking the fixed term tenancy agreement. The Landlord stated that the tenancy agreement signed by the Tenant identifies that this amount of liquidated damages is owed in the event that the Tenant breaks the lease. The Landlord stated that the liquidated damages cover the Landlord's cost of re-renting the rental unit, including showing the rental unit, advertising, and responding to prospective tenant inquires. The Landlord stated that they were able to obtain new tenants to move in for May 01, 2011.

The Tenant stated that he did not understand that he could not break the fixed term tenancy agreement, and that he did not understand the liquidated damages clause in the tenancy agreement. The Tenant agrees that he signed the tenancy agreement and that it does state it is for a fixed term and contains the liquidated damages clause. The Tenant stated that he does not have much experience as a Tenant. The Tenant stated that he gave the Landlord more than 30 days Notice in March 2011 that the tenancy would be ending effective April 30, 2011. The Tenant stated that he put an ad on the internet to try and help the Landlord re-rent the rental unit. The Tenant stated that the Landlord obtained new tenants for the rental unit and did not suffer any loss of rent. The Tenant disputes the Landlord's claim for liquidated damages.

Utility bills

The Landlord stated that the Tenant pays a share of the hydro bill for the rental house based on the number of renters in the house. The Landlord states that the Tenant owes

40% of the hydro bill for hydro usage for part of March and all of April 2011, as the rental house had five renters and the Tenant and his co-tenant JM represented two out of the five renters in the house. The Landlord provided a copy of the relevant hydro bills and calculations into evidence. The Landlord stated that she did not receive the hydro bills until the tenancy ended and that she had to wait until she had the Tenant's forwarding address before the issue could be resolved. The Landlord is claiming \$197.80 for the hydro bill portions owing in relation to the rental unit.

The Tenant agrees that the Landlord's description of the division of the hydro bill is correct, and that he is responsible for 40% of the hydro costs. The Tenant stated that he thought the hydro bills had been fully paid prior to move out and stated that he was not aware that any further amounts had been owing as the Landlord did not contact him by phone to discuss this with him after the tenancy ended.

Carpet Cleaning

The Landlord stated that the Tenant did not have the rental unit carpet professionally cleaned at the end of the tenancy as required by the tenancy agreement. The Landlord stated that she paid to have the carpets professionally cleaned at the end of the tenancy and that it cost her \$224.00. The Landlord provided a copy of the carpet cleaning bill into evidence.

The Tenant confirmed that they did not have the carpets professionally cleaned when they moved out. The Tenant stated that the Landlord told them that the rental unit looked clean and in good condition when they moved out and signed the move out condition inspection report. The Tenant agrees that carpet cleaning was a term of the tenancy agreement which they signed, however the Tenant states that there is nothing noted on the move-out condition inspection report about professional carpet cleaning. The Tenant does not agree with the Landlord's claim.

Exterior door repair and painting

The Landlord stated that they did not inspect the exterior with the Tenant as part of the move out condition inspection. The Landlord stated that they discovered after the move out inspection that there was damage to several exterior areas. The Landlord stated that the Tenant damaged the access door to the rental unit leaving several chips in the door that needed to be repaired and repainted. The Landlord submitted photographs of a chipped green exterior door and chipped rail and deck post into evidence. The Landlord stated that it cost them \$228.00 to have this repaired and repainted. The Landlord submitted a copy of a bill for "painting" costs into evidence.

The Tenant stated that they did not damage the door or rail or deck post during their tenancy. The Tenant also stated that the access door to the rental unit was purple during their tenancy and not green. The Tenant stated that the tenants that lived on the main floor of the rental house damaged the deck and post. The Tenant stated that none of this damage was noticed on the move out inspection and that the Landlord neglected

to inspect the exterior with them. The Tenant stated that the Landlord had their cell phone contact numbers and could have called them to return to the rental unit to do the exterior inspection, but failed to do so. The Tenant does not agree with the Landlord's claim.

Deck repair

The Landlord stated that the Tenant is responsible for the damage to the deck which is directly adjacent to the rental unit. The Landlord provided photographs of the deck damage into evidence. The Landlord estimates that it will cost \$350.00 to repair the deck and states that she had not undertaken the work yet, and that new tenants moved into the rental unit on May 01, 2011.

The Tenant stated the deck was shared by all of the tenants residing in the rental house and was not for their exclusive use. The Tenant stated that the tenants on the main floor removed a partition that was on the deck and damaged the deck. The Tenant stated that they are not responsible for damage and they do not agree with the Landlord's claim.

The Landlord requests a monetary order of \$1,599.80 for liquidated damages (\$550.00), utility bills (\$197.80), professional carpet cleaning (\$224.00), exterior door repair and painting (\$228.00), deck repair (\$350.00), and the filing fee (\$50.00).

The Landlord's Application requests to keep the security deposit (\$550.00) from this tenancy in partial satisfaction of the claim.

Analysis

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

With regards to the Landlord's claim section 67 of the 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.

In a claim for damage or loss under the Regulation the Applicant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent pay for the loss the Applicant must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Liquidated damages

I find that the Tenant breached the tenancy agreement and ended the tenancy earlier than the fixed term was due to end. I also find that the Tenant signed the tenancy agreement which contains a liquidated damages clause for \$550.00 to cover the Landlord's re-renting costs in the event the Tenant breaches the fixed term tenancy agreement. I find that the Landlord's request for \$550.00 in liquidated damages is a reasonable amount to compensate the Landlord for their re-renting costs that occurred when the tenancy ended early. As a result, I find that the Tenant owes the Landlord \$550.00 for liquidated damages in accordance with the Act and the tenancy agreement.

Utility bills

I find that the Landlord has provided sufficient evidence of the outstanding hydro bills and the calculation of amounts owed in relation to the tenancy. I accept that the Landlord did not have all of the hydro bills in their possession at the time the tenancy ended, based on the date of issue on the bills. The Tenant's testimony did not dispute the amounts owed or the calculation of the bills. The Tenant states he was unaware that further amounts were owing, however, there is no dispute that the Tenant failed to provide a forwarding address to the Landlord until January 24, 2012, which is over eight months after the tenancy ended. I find that the Landlord is entitled to \$197.80 for the hydro bill portions owing for March to April 2011 in relation to the rental unit.

Carpet Cleaning

I find that the Landlord has provided sufficient evidence that they are entitled to recover the professional carpet cleaning costs that they incurred in relation to this tenancy. The Landlord provided a copy of the professional carpet cleaning bill into evidence. I find that the tenancy agreement signed by the Tenant contains a term which states, "carpet has to be cleaned by professional at move out". I find that the tenancy agreement is clear and that it was not necessary for the Landlord to make extra mention of this tenancy agreement term on the move out inspection report. The Tenant does not dispute that they failed to have the carpet professionally cleaned at move out. As a result, I find that the Landlord is entitled to recover their professional carpet cleaning costs of \$224.00 from the Tenant.

Exterior door repair and painting

I find that the Landlord has failed to provide sufficient evidence that the Tenant damaged the exterior door or deck post or railing. The Landlord failed to include the exterior of the rental unit in the move out condition inspection with the Tenant. Also, the Landlord has provided a photocopy of a bill for "painting" which is not clear whether this relates to the exterior painting of a door. The bill is vague enough that it could relate to interior painting and the bill appears to have been altered with the rental unit address added at a different time. As a result, I dismiss the Landlord's claim for \$228.00 for exterior door repair and painting due to insufficient evidence.

Deck repair

I find that that the Landlord has failed to provide sufficient evidence that the Tenant damaged the deck. The Landlord failed to include the exterior of the rental unit in the move out condition inspection with the Tenant. The Landlord has not undertaken deck repairs and has only estimated future costs. New tenants moved into the rental unit on May 01, 2011. The Landlord has not incurred any costs or losses in relation to the deck at this time. As a result, I dismiss the Landlord's claim for \$350.00 for deck repair.

In summary the Landlord is entitled to \$550.00 for liquidated damages, \$197.80 for utility bills, and \$224.00 for professional carpet cleaning.

As the Landlord has partially succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$1,021.80.

The Landlord's Application requests to keep the security deposit in partial satisfaction of the claim. The Landlord holds the security deposit of \$550.00 from this tenancy. I order that the Landlord retain the full amount of the security deposit in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$471.80.**

Conclusion

The Landlord's claim for repair and painting of an exterior door and deck repair are dismissed.

The Landlord is entitled to \$550.00 for liquidated damages, \$197.80 for utility bills, \$224.00 for professional carpet cleaning, and \$50.00 for the filing fee.

As I have ordered that the Landlord retain the security deposit (\$550.00), I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant, AR, in the amount for **\$471.80**, for the liquidated damages, utility

bills, professional carpet cleaning, and the filing fee. This order must be served on the Tenant, AR, and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: April 04, 2012.

Residential Tenancy Branch