



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for monetary compensation for damage to the unit, site or property, for unpaid rent, for compensation for loss or damage under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on February 1, 2012. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is there rent arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent and if so how much?
3. Is there damage or loss and if so how much?
4. Are the Landlords entitled to compensation for the damage or loss and if so how much?
5. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on April 1, 2011 as a fixed term tenancy with an expiry date of March 31, 2012. Rent was \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 on March 19, 2012. The Tenants said they moved out of the rental unit on January 27, 2012. The Tenant continued to say they gave the Landlord written notice that they were moving out of the rental unit in letters dated December 13 and December 28, 2011. The Tenants said there was no written mutual agreement to end the tenancy with the Landlord.

At the start of the conference call the Landlord said she is sent in an amended claim that includes a quote to repair the stove for an amount of \$180.75. The Landlord said she had previously claimed \$35.00 for the repairs to the stove. The Tenant said they are responsible for the damage to the stove and they priced out a replacement tray for

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the bottom of the oven and it cost \$46.00. The Tenants said they are willing to pay the \$46.00 to repair the stove.

The Landlord continued to say that when the Tenant moved out early she had other tenants that wanted to move into the rental unit, so the rental unit was rented to the tenants from another unit as of February 1, 2012. The Landlord then said she is claiming for the half a month's rental loss on the other rental unit that was empty until February 15, 2012. As a result the Landlord is claiming \$400.00 of loss rental for the other rental unit that has a rent of \$800.00 per month. The Landlord said she is also claiming damages of \$250.00 for additional parking that the Tenants used, advertising costs to rent the other rental unit of \$274.83 and for cleaning supplies of \$8.95. The Landlord said her total claim is as follows:

| | |
|--------------------------------------|-----------|
| Unpaid rent for the other unit | \$ 400.00 |
| Advertising costs for the other unit | \$ 274.83 |
| Additional parking costs | \$ 250.00 |
| Repair Stove | \$ 180.75 |
| Cleaning supplies | \$ 8.95 |

| | |
|--------------|-------------------|
| TOTAL | \$1,114.83 |
|--------------|-------------------|

The Landlord said she submitted receipts to support her claim and letters from the commercial tenants in the rental complex that support her claim that the Tenants used more parking space than allotted for in the tenancy agreement.

The Tenants said they used additional parking for approximately 2 weeks of the tenancy when they were working on their travel trailer and when they had a utility trailer for their move out. The Tenant continued to say that they responded to any complaints that they had about parking and the complaints did not happen again. The Tenant said the Landlord did not say anything about extra charges for parking until the Landlord made this application and the Tenant said they do not feel responsible for any additional parking charges.

With respect to the lost rent the Tenant said their unit was rented the day after they moved out; therefore there is no lost of rental income on the unit they were in and they are not responsible for lost rent in another rental unit in the rental complex. Further the Tenant said they are not responsible for advertising costs for the other unit.

The Tenant continued to say the Landlord did not do a move in or move out condition inspection report and the Tenant said they cleaned the rental unit before they moved out.

The Landlord requested to retain the Tenants' security deposit of \$550.00 and to recover the \$50.00 filing fee for this proceeding.

Analysis

For an applicant to be successful in a monetary claim the applicant must prove a loss exists, they must prove that loss happened solely because of the respondents' actions, they must verify the loss with receipts or invoices and they must show how they tried to minimize the loss.

In this situation the Landlord may have had a loss in another rental unit which they believe is the result of the Tenants moving out of the rental unit in this application, but the Tenants are not responsible for a tenancy agreement in a unit that they did not rent. Consequently I find that the Tenants have established grounds to show they are not responsible for the loss of rent of \$400.00 or advertising costs of \$274.83 for the renting of the other rental unit and as such the Landlord's claims for lost of rent and advertising costs are dismissed without leave to reapply.

Further the Landlord did warn the Tenants about parking in stalls not designated to the Tenants, but the Landlord did not indicate a fee would be charged to the Tenants if they used the parking stalls; therefore I find the Landlord has not established grounds to claim additional parking charges from the Tenants in the amount of \$250.00. I dismiss the Landlord's claim for additional parking charges in the amount of \$250.00 without leave to reapply.

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

As the Landlord said he is unable to establish the condition of the rental unit at the start of the tenancy and there is no move out inspection report completed by the Landlord and the Tenant, I find that the Landlord has not established proof that the Tenant damaged the rental unit. Further since the Tenants said they were responsible for the

damage to the oven tray and they priced out a new oven tray at \$46.00, I award the Landlord \$46.00 for repairs to the oven even though the Landlord has not established evidence to prove the claim. I order the Landlord to deduct \$46.00 from the Tenants' security deposit and to send the balance of the security deposit \$504.00 back to the Tenants forthwith.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of the \$50.00 filing fee, which the Landlord has already paid.

Conclusion

The Landlord is ordered to retain \$46.00 of the Tenants' security deposit.

The Landlord's claims for lost rent, advertising, additional parking charges and cleaning supplies are dismissed without leave to reapply.

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*.
