



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage and cleaning, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

In the original Application the Landlord claimed \$929.77 against the Tenant. During the hearing the Landlord wanted to increase the claim to \$1,039.73, however, I did not allow this increase. It was explained to the Landlord that in order to increase the monetary claim, the Landlord was required to amend the Application and re-serve it on the Tenant and the Branch, in accordance with the rules of procedure.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in August of 2011, with the parties entering into a written tenancy agreement. The rent was \$900.00 per month and the Tenant paid the Landlord a security deposit of \$450.00 in July of 2011. An incoming condition inspection report was prepared.

The Tenant vacated the rental unit on July 31, 2012. No outgoing condition inspection report was performed. The Landlord gave testimony that he walked through the rental unit with the Tenant at the end of the tenancy.

The Landlord testified that he could smell cat urine in the rental unit when he walked in. The Landlord had to clean the floor and paint over it to get rid of the smell.

The Landlord claims the Tenant did not use salt in the water softener. The Landlord testified that at the start of the tenancy he told the Tenant that he had to add salt to the water softener. The Landlord testified he left a manual with the Tenant for the water softener.

The Landlord claims the Tenant broke a tap at the rental unit. The Landlord testified that the joint in the faucet snapped. The Landlord alleges that someone had to exert a great deal of downward pressure on the tap in order for it to break along the joint.

The Landlord also claims for repairs required to the kitchen cabinet under the sink.

The Landlord claims four hours for cleaning the stove, and for spot cleaning the carpets, for cleaning the windows and for cleaning the freezer.

The Landlord claims for a tear in the screen door.

The Landlord claims \$225.00, plus \$27.21, for the water softening services, \$94.99 for installation of a new faucet, \$53.95 for the kitchen cabinet repair, \$2.85 for a laundry chute door knob, \$381.75 for cleaning the oven, carpets, windows and cat urine smell, and \$75.00 for the torn screen door.

In reply, the appearing Tenant agreed that the kitchen cabinet under the sink was broken, and the knob for the laundry chute door was missing. The Tenant agreed the stove may have needed more cleaning, however, the Tenant disputes that it took four hours to clean the stove.

The Tenant testified and submitted a receipt indicating they had purchased salt to use in the water softening system. The Tenant said they used the salt regularly, but it might have run out just before the end of the tenancy.

The Tenant testified that the spots on the carpet were not pointed out to them and they had no knowledge of them.

The Tenant testified that the incoming condition inspection report recorded a tear in the screen door at the start of the tenancy.

The Tenant testified that they were expecting to hear from the Landlord about the outgoing condition inspection report while they were still in the rental unit. The Tenant had thought they would have time to rectify any problems the Landlord may have with the rental unit.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Tenant breached section 37 of the Act, by failing to return the rental unit to the Landlord reasonably clean and undamaged.

I note that during the hearing the Landlord testified he wanted to have the rental unit returned in “pristine condition”. Section 37 of the Act does not require a rental unit to be returned in pristine condition; rather it requires the rental unit to be returned reasonably clean and undamaged, except for reasonable wear and tear. Nonetheless, I do find the Tenant did not leave the rental unit reasonably clean in all areas, and there were unrepaired damages that occurred, which are breaches of this section of the Act.

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.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on the testimony, evidence, photographs and on a balance of probabilities, I find that the Landlord has established claims for \$53.95 for the kitchen cabinet repair, \$2.85 for a laundry chute door knob, and a portion of the cleaning of the stove. I agree with the Tenant's assertion that four hours seems like a long time to clean a stove. I do allow the Landlord two hours of cleaning for the stove at \$20.00 per hour, for a total of \$40.00.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this instance, I find the Landlord provided insufficient evidence to prove the Tenant had not used salt in the water softener, that he damaged the faucet, that he caused a tear in the screen door (which already had a tear at the start of the tenancy) or that he failed to clean the rest of the rental unit to a reasonable standard. The Landlord did not perform an outgoing condition inspection report and this harmed the Landlord's ability to meet the onus of proof. I also note that on the items that were awarded to the Landlord, there was some agreement on behalf of the Tenant.

I find that the Landlord has established a total monetary claim of **\$121.80**, comprised of \$96.80 for the above described amounts and \$25.00 towards the fee paid for this application. As the Landlord had limited success, I have reduced the filing fee.

While the Landlord has extinguished the right to claim against the deposit, due to the failure to perform an outgoing condition inspection report, I do find that section 72 provides that this award may be offset against the deposit. Therefore, I order that the Landlord may retain **\$121.80** from the deposit of **\$450.00** in full satisfaction of the claim and I order the Landlord, under section 67, to return to the Tenant the balance due of **\$328.20**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has had limited success proving the claim made against the Tenant. The Landlord may deduct \$121.80 from the deposit of \$450.00 and the Tenant is granted an order for the balance due from the Landlord of **\$328.20**.

This decision is final and binding on the parties, unless 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: October 30, 2012.

Residential Tenancy Branch