



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation for cleaning and making repairs in the rental unit, to retain the security deposit in 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 Issues

The parties were involved in a prior Dispute Resolution hearing, which resulted in a written decision dated August 23, 2012. In that decision the parties came to a mutual agreement involving certain resolutions to the matters, such as the end of the tenancy and other issues. In the mutual agreement, the Tenants had agreed to pay the Landlord September rent on September 1, 2012.

The Tenants also supplied evidence late, one business day before the hearing, and therefore this evidence was not considered in making a determination.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began in December of 2011, with the parties agreeing on a monthly rent of \$1,325.00 and the Tenants paying the Landlord a security deposit of \$662.50.

Based on the affirmed testimony and the evidence provided by the parties, I find that the Tenants agreed to and were ordered to vacate the rental unit no later than September 30, 2012.

The Landlord testified that the Tenants vacated the rental unit on September 2, 2012, and an outgoing condition inspection report was performed on that date. The Tenants signed the outgoing condition inspection report on that date agreeing that the condition of the rental unit was fairly represented in the written report. The Tenants also agreed the Landlord could make deductions from the security deposit, "to be determined".

The Landlord is claiming she has incurred or will incur costs to clean and repair the rental unit due to the condition it was left in by the Tenants which exceeds the security deposit. The Landlord claims as follows:

a.	Loss of rent for September 2012	1,325.00
b.	Labour and materials for repairs	968.59
c.	Replace fridge crisper	63.73
d.	Cleaning rental unit	212.50
e.	Carpet cleaning	112.00
f.	Estimate to replace dishwasher panel	150.00
g.	Bathroom cabinet door magnet	1.79
h.	Filing fee	50.00
	Total claimed	\$2,883.61

In support of all the above claims, except for item "f." above, the Landlord has provided receipts and invoices to support the claims. The Landlord did not provide an invoice indicating the dishwasher panel had been repaired or replaced.

The Landlord testified that she had an initial estimate to do all the work required and found that the rate of \$45.00 per hour from that company was too high. The Landlord used contractors who charged \$25.00 per hour or less.

The Tenants did not dispute the claims of the Landlord as to what repairs and cleaning were required, although the Tenant did testify she knew nothing about the dishwasher panel being broken. The Tenant testified that she was surprised at the amount the Landlord was claiming for the work in the rental unit. The Tenant testified she thought that just part of the security deposit would cover all the work required.

The Tenant explained they left the rental unit in a hurry due to the order of possession being granted. The Tenant testified she did not think it was fair to have to pay the Landlord rent for September of 2012, when the Tenants were being forced out of the rental unit. The Tenant explained that her spouse and the Landlord did not get along from the first day of the tenancy and testified they were like oil and water, in that they did not mix.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Tenants breached section 37 of the Act by failing to leave the rental unit reasonably clean and undamaged (except for reasonable wear and tear) when they vacated. I also find the Tenants breached the mutual agreement they made with the Landlord in the first hearing, to pay the September 2012 rent.

I note the Tenants were not “forced” to leave the rental unit on September 2, 2012. In the August 23, 2012, hearing the parties came to a mutual agreement regarding the end of the tenancy.

The Tenants also agreed to pay the Landlord the September 2012 rent, and agreed they would move out on or before September 30, 2012. It appeared the Tenants did not read the Decision from the August 23, 2012 closely, as they seemed to be relying on discussions that occurred during that hearing, rather than the written Decision which is the sole record of the outcome. Had the Tenants read this carefully they should have realized they had the time and opportunity to make repairs to the rental unit and clean it to a reasonable standard, before vacating.

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. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, the Landlord here must prove the following:

1. That the Tenants violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord 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 Tenants. 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.

I find the Landlord has proven the Tenants failed to clean and make repairs to the rental unit. The Tenants did not dispute this and in fact signed their agreement to this in the condition inspection report.

With the exception of the dishwasher panel, I find the Landlord has proven the breaches have caused losses to be incurred and has shown the value of the losses. I do not find the Landlord has met the burden to prove the Tenants damaged the dishwasher panel and as they did not agree to this item in the condition inspection report, as it was not noted. Therefore, I dismiss the claim with regard to the dishwasher panel, without leave to reapply.

I also find the Landlord has proven they did take steps to minimize the losses suffered. The claims of the Landlord are reasonable in these circumstances.

Therefore, I find that the Landlord has established a total monetary claim of **\$2,733.61** comprised of the items a., b., c., d., e., g., and h., described above and the \$50.00 fee paid for this application.

I order that the Landlord retain the deposit of **\$662.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,071.11**.

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

Conclusion

The Tenants breached the Act and the mutual agreement they made with the Landlord. The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due of \$2,071.11.

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: December 05, 2012.

Arbitrator
Residential Tenancy Branch