



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rental arrears, painting, repairs, disposal and cleaning.

The landlord appeared. Despite being personally served with a copy of the Application and the hearing package, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental arrears, cleaning and repairs?

Background and Evidence

The tenancy began with this tenant in September, 2012 and rent was \$1,120.00. A security deposit of \$500.00 was paid. A Monetary Worksheet was completed and submitted listing the landlord's claims.

Although, in the list of claims on the "Monetary Order Worksheet", the landlord alludes to additional appendices and receipts that are supposed to be in evidence, no additional documentation was attached to the worksheet. Under the section of the worksheet that states,

"In support of your claim, you are submitting copies of the following documents:"

the landlord did not check off any of the listed documents shown on the form.

During the hearing, the landlord also made several verbal references to photos, copies of communications and copies of the move-in and move-out condition inspection reports. However, none of this evidence was found to physically be in the file and none of this alleged evidence was located elsewhere, despite a search made after the hearing.

The "Notes to File" sheet, attached to the application, filled out by the landlord, at the time the application was filed, indicated that no evidence was submitted with the original file.

In the file, there was a hand-written notation from the Residential Tenancy Branch staff stating:

"Discussed service re evidence".

The landlord testified that the tenant moved out at the end of February without paying the \$1,120.00 rent owed, and the rent is being claimed. The landlord is also claiming the cost of paint, replacement light fixtures, new flooring, in addition to \$635.00 for cleaning and \$44.35 for disposal costs.

Other monetary claims by the landlord include the cost of mailing the application and other documents.

According to the landlord, the parties had completed a proper move-in condition inspection report together at the start of the tenancy but the landlord alone completed a move-out condition inspection report noting the damage left by the tenant. The landlord testified that the tenant did not respond to the schedule set for the move-out condition inspection and it was done in the tenant's absence.

The landlord testified that the tenant acknowledged causing the claimed damage and the landlord made reference to copies of emails that, according to the landlord, verified these discussions. The landlord testified that the tenant did not provide a forwarding address, but the landlord stated that the tenant has been in touch with the landlord by phone and email. The landlord testified that, in fact, the tenant paid \$500.00 towards the expenses owed.

The landlord is seeking \$2,350.53, less the \$500.00 already paid by the tenant for a claim of \$1,850.63 plus the \$50.00 cost of the application.

Analysis

With respect to the rent owed, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Accordingly I find that the tenant must compensate the landlord for rental arrears in the amount of \$1,120.00.

With respect to the landlord's claims for damages, I find that a Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that

results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In regard to the landlord's claims for cleaning and repairs, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this instance, on a balance of probabilities, I find that the tenant did not comply with section 37 of the Act and I accept undisputed verbal testimony that the unit was not left reasonably clean by the tenant. Despite the absence of the evidence including the missing copies of the move-in and move-out condition inspection reports, I accept the landlord's testimony that the unit did require extensive cleaning at a cost of \$635.00 and refuse disposal costing \$44.35.

I find that the landlord's claim for reimbursement of mailing or other costs for preparing for the Dispute Resolution Hearing, are not compensable expenditures covered under any provision of the Act and must therefore be dismissed. However, I find that the landlord is entitled to be reimbursed the \$50.00 cost of the application.

In regard to the other damage claims made by the landlord, due to missing evidence that could not be located, I find that there is not sufficient documentary support to prove the damage and justify the landlord's claims for painting, flooring and replacement light fixtures.

Accordingly, I find that the landlord is entitled to total monetary compensation of \$1,849.35 comprised of \$635.00 for cleaning, \$44.35 for garbage removal and the \$50.00 cost of the application. I find that the tenant has paid \$500.00, leaving

\$1,349.50 still outstanding. I order that the landlord retain the tenant's \$500.00 security deposit in partial satisfaction of the claim, leaving a balance of \$849.50 in favour of the landlord. The remainder of the landlord's application is dismissed without leave.

I hereby grant the Landlord an order under section 67 for \$849.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is partly successful in the application and is granted a Monetary Order for rental arrears and damages.

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: September 16, 2013

Residential Tenancy Branch

