



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rents, for compensation for damages to the rental unit and for cleaning the rental unit, for other compensation under the Act and the tenancy agreement, 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 Matters

This is the second dispute resolution proceeding between the parties. The first hearing was conducted in July of 2013, and on July 18th the Arbitrator issued the Landlord an order of possession. The file number for this first Application is reproduced on the cover page for this decision. The parties agreed during the course of this first hearing to conduct the outgoing condition inspection report on July 27, 2013, among other points.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on March 1, 2012, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,650.00, payable on the first day of the month, and the Tenants paid a security deposit of \$825.00 and \$825.00 for a pet damage deposit on February 12, 2012 (the “deposits”). The initial term of the tenancy

was for one year, and then it converted to a month to month basis. The tenancy agreement contained three addendums, these contained but were not limited to, terms for the gardening and landscaping responsibilities of the Tenants, terms for the pets in the rental unit, terms for refilling of the oil tank at the end of the tenancy, and a term that the carpets were to be professional cleaned at the end of the tenancy.

The tenancy ended under an order of possession as described above, and the Tenants had vacated the rental unit by the end of July. The parties had reached a settlement agreement to conduct the outgoing condition inspection report on July 27, 2013; however, at the time of the inspection the Tenants refused to go through the rental unit with the Landlord and left the rental unit before the report was completed. The appearing Tenant testified he was not agreeing with the Landlord about the state of cleanliness of the rental unit, he was not feeling well and therefore, he left. The Landlord completed the inspection and he testified he tried to be as objective as possible in the absence of the Tenants.

The Landlord is claiming for unpaid rent for April of 2013 in the amount of \$415.00. The Landlord also claims for unpaid rents for of \$1,650.00 for each month of May, June and July of 2013, for a total of **\$5,365.00** in unpaid rents.

The Landlord is also claiming for a loss of rent for August 2013. The Landlord alleges the rental unit was left in such a poor state of cleanliness by the Tenants that he could not rent it out for August, and requests **\$1,650.00** in lost rent for August.

The Landlord testified that in October of 2012, he did an inspection of the rental unit and found that the Tenants' cats had clawed and damaged a portion of the carpet.

The Landlord and the Tenant discussed doing repairs, and the Landlord had a carpet layer attend the rental unit to do an estimate. The estimate was conducted in November of 2012 and at this time further damage had occurred. The Landlord testified that an entire closet in the upstairs bedroom had been converted to a litter box and the smell of cat urine was overpowering. The Landlord testified that he and the Tenants discussed the situation and the Tenants acknowledged that the Tenants and the cats were responsible for this damage. The Landlord obtained an estimate for the replacement of the carpets and claims **\$2,800.00** for the carpet replacements. The Landlord testified that the carpets were installed in the year 2000, although they were in good shape at the start of the tenancy with only one stain.

The Landlord testified and submits that the Tenants did not clean the rental unit to a reasonable standard. The Landlord has supplied a copy of the condition inspection reports performed and the outgoing report indicates most areas in the rental unit as needing cleaning, and some areas of the rental unit as "filthy". The Landlord has submitted two invoices for cleaning, one for 15 ½ hours of cleaning and for cleaning supplies in the amount of **\$448.44**, and one for 17 hours of cleaning for **\$459.00**. Both invoices are from third party companies.

The Landlord claims for heating oil that was not replaced by the Tenants. The Landlord testified that at the start of the tenancy the tank was half full. At the end of the tenancy the tank had been run dry and the Landlord testified he had to have oil put in and have a technician come in to prime the lines to the furnace. The Landlord claims for **\$551.89**, to replace half the tank of oil and has provided a detailed calculation of the amount claimed.

The tenancy agreement required the Tenants to pay for water at the rental unit. The Landlord claims for a water bill of **\$222.34**, which the Tenants did not pay. The Landlord has supplied an invoice from the local municipality for this amount.

The Landlord claims for the cost of weeding and cleaning up the yard, as well as debris removal. In evidence the Landlord has supplied an invoice for **\$297.15**, from a landscaping and garden maintenance property.

Lastly, the Landlord claimed for replacing a fireplace screen and grate. He alleged that these were damaged due to high heat in the fireplace, and claims **\$75.00**, for the replacements.

In reply to the Landlord's claims, the appearing Tenant testified he did owe the Landlord some rent money, but he did not agree to the amount claimed by the Landlord. The Tenant did not explain what amount he felt was due to the Landlord for rent.

The Tenant testified he had been injured and had been unable to work for some time period. He testified he was a spinal cord patient. The Tenant testified the Landlord was trying to get everything he could out of the Tenants.

The Tenant testified he had agreed with the Landlord that their cats had caused some damage to the carpets; however, the Tenant had not committed to any price he would repay the Landlord.

The Tenant testified that they cleaned the entire rental unit inside and out before they vacated the rental unit. The Tenant alleges the Landlord is trying to make it seem like the rental unit was left in a filthy condition by the Tenants.

The Tenant testified that not all of the stains left on the carpet were from cat urine. The Tenant explained they had put down several layers of polyurethane plastic in the closet where the litter was kept for the cats. The Tenant alleged the Landlord is really just trying to get a carpet from the Tenants, when the carpet was really old.

The Tenant testified they did have fires in the fireplace, but these were not unusually hot or large.

The Tenant agreed that the oil tank was half full at the start of the tenancy and the Tenants had not put oil in it before they left.

The Tenant testified he did not submit any evidence for the hearing, although he had a disc of pictures he took of the rental unit at the start of the tenancy.

Analysis

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, 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 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.

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.

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

I find the Tenants breached section 26 of the *Act* by failing to pay the rent when due. I accept the evidence of the Landlord that rent in the amount of **\$5,365.00** remains unpaid.

I find the Tenants breached section 37 of the *Act* by failing to leave the rental unit reasonably clean and undamaged, except for normal wear and tear. I accept the preponderance of evidence provided by the Landlord that the rental unit and yard was left unclean and required significant work, cleaning and removing debris to bring it to a reasonable standard. I allow the Landlord the cleaning and landscapes costs incurred, in the amount of **\$1,204.59** (\$448.44 + 459.00 + 297.15).

I have found a significant amount of cleaning was required at the rental unit, and this leads me to conclude the Landlord was unable to rent the property out for August due to

the condition it was left in by the Tenants and the work that was required. Therefore, I allow the Landlord loss of rent for August in the amount of **\$1,650.00**.

I find the Tenants failed to replace the heating oil they used and allow the Landlord **\$551.89** for replacing the oil. The Tenant agreed the tank was half full at the start of the tenancy and that they had not put oil in the tank.

Without heating oil in the tank, I find it would be reasonable to conclude the Tenants must have used the fireplace to supplement and heat portions of the rental unit. I find, on a balance of probabilities, that this extra use of the fireplace caused damage to the screen and allow the Landlord **\$75.00** for the screen.

I find the Tenants were required under the tenancy agreement to pay the water bill, and they have failed to do so. I allow the Landlord **\$222.34** for the municipal water bill.

I dismiss the claim of the Landlord for the cost to replace the carpets in the rental unit. Although the Tenants did cause damage to the carpet, the carpets were more than 10 years old. Under Policy Guideline 40 the useful life expectancy of carpets is 10 years. Policy Guideline 40 sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[Reproduced as written.]

As the carpets were past their useful life expectancy I do not find the Tenants should contribute to their replacement. I dismiss this claim without leave to reapply.

Nevertheless, the Tenants were required to have the carpets professionally cleaned at the end of the tenancy. There is insufficient evidence from the Tenants that the carpets were professionally cleaned when they vacated the rental unit. I find the Tenants breached the tenancy agreement by not cleaning the carpets and allow the Landlord a nominal amount of **\$200.00** for this cleaning.

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.

I find that the Landlord has established a total monetary claim of **\$9,368.82**, comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the Landlord may retain the deposits of **\$1,650.00** in partial satisfaction of the claim and I grant the Landlord a monetary order under section 67 for the balance due of **\$7,718.82**.

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 tenancy agreement by failing to pay rent, by failing to return the rental unit and property to the Landlord in a reasonable state of cleanliness, by failing to pay for heating oil they used, by failing to pay for the water bill, and these breaches have caused the Landlord to suffer proven losses.

After offsetting the deposits held from the total amount due to the Landlord, I order the Tenants to pay the balance of **\$7,718.82** to the Landlord.

I do not allow the claim for the carpets as these had exceeded their useful life, although I do allow a nominal amount as there was insufficient evidence the Tenants had the carpets professionally cleaned at the end of the tenancy.

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: November 8, 2013

Residential Tenancy Branch