



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and the Application in person on October 10, 2013. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord submitted evidence for this hearing on December 30, 2013, and therefore, this evidence was late under the rules of procedure. The Landlord testified he served the Tenant with this same evidence on October 28, 2013, in person, and he faxed this evidence into the branch on October 28, 2013 as well. The Landlord testified that in preparation for the hearing today he reviewed his records and became aware that the faxed evidence sent to the branch in October had not been actually been received by the branch, according to the fax communication report. He went into the branch as soon as possible to serve this evidence on December 30, 2013.

As the Tenant received this evidence in October of 2013, I find that the Tenant was served in accordance with the rules of procedure. I find that the Landlord's evidence being late to the branch is not prejudicial to the interests of the Tenant and therefore, I find in this instance that the evidence should be considered.

In the Application of October 9, 2013, the Landlord had claimed the amount of \$2,681.06. In his evidence of October 28, 2013, the Landlord increased the amount claimed to \$2,751.48. I find the Landlord should have amended his Application for the increased amount and then re-served the Tenant with the amended Application, in order to increase the amount claimed against the Tenant. I do not allow the Landlord to increase the amount claimed and find the Landlord is limited to a total claim of \$2,681.06 here.

Lastly, the Landlord had applied to retain the security deposit. However, the security deposit had been awarded to the Landlord in a previous hearing between the parties, before a different Arbitrator. For ease of reference, I have included the file number for the previous hearing on the cover of this Decision. Therefore, it was unnecessary to consider the issue of the security deposit in the proceeding before me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on or about January 2, 2013, with the parties entering into a written tenancy agreement. The Tenant was to pay \$900.00 per month in rent, and a security deposit of \$450.00 was paid to the Landlord.

In September of 2013, the Tenant was served with a 10 day Notice to End Tenancy for unpaid rent, and the Tenant vacated the rental unit on or about September 28, 2013.

The Landlord now brings forward this claim to recover the costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

The Landlord claims \$2,080.50 for the cost of:

- cleaning up the rental unit including the stove, walls, ceilings, and kitchen cabinets;
- removing soiled furniture and other items left behind by the Tenant;
- repairing drywall;
- removing candle wax from walls, trim and floors;
- washing the walls, doors, window trim, the fridge door and heater covers to remove crayon and marker stains;
- painting the rental unit walls with two coats of stain blocker and two top coats of paint;
- sand and repaint heater covers; and
- painting a wall at the neighbour's house which had been soiled by a marker.

In addition to the above, the Landlord claims

- \$231.03 for paint supplies;
- \$48.84 for light bulb replacements;
- \$153.77 to replace glass globes on a ceiling fan, fan lights, and smoke alarms;
- \$93.98 to replace three damaged mini blinds;
- \$74.95 to replace garbage cans and a fire extinguisher;
- \$4.99 for batteries for smoke alarms; and
- \$13.42 to fix a window screen.

In evidence the Landlord supplied copies of invoices, receipts, statements, the condition inspection report, and photographs to support the above claims.

The Landlord testified that when the Tenant was vacating the rental unit she told him she would have someone come and pick up the garbage and soiled furniture from the rental unit. The Landlord testified that this did not occur.

The Landlord testified and supplied photographs of the walls, trim, floor and heater covers, showing wax and marker stains on these. The Landlord testified he had to have the walls and the other items cleaned and then painted with two coats of a stain blocker to cover the marker and wax markings on these, then two coats of paint had to be applied as well. He testified the unit was freshly painted about nine months before the Tenant moved in.

The Landlord testified and provided photographs of similar marker writing that were put on a neighbor's wall. The Landlord alleges these markings must have been done by the Tenant as these were higher than her two children could have reached.

The Landlord testified that without permission, the Tenant constructed a rabbit hutch using lumber from a storage shed on the property. The Landlord testified there was hay all around the area of this hutch.

The Landlord testified that there were two glass shades on the ceiling fan which had been removed by the Tenant, as well as light bulbs missing or burnt out.

The Landlord further testified that the Tenant removed items from the rental unit property without permission. These items included a kitchen fire extinguisher, a smoke detector, smoke detector batteries, toilet plunger, two garbage cans, a garden shovel and hand tools, 10 solar garden lights and a 50' outdoor extension cord.

The Landlord acknowledged he did not make an inventory of these items prior to the Tenant moving in. However, there was a note on the condition inspection report that the three smoke alarms in the rental unit had just had new batteries installed, prior to the start of the tenancy.

The Landlord testified the Tenant did not provide him with a forwarding address where she was moving to. The Landlord testified he was informed by a third party about seeing the Tenant in a different property. The Landlord explained he drove past the property and saw the Tenant there and his garbage cans on this property.

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

I find the Tenant breached section 37 of the *Act* when they did not clean the unit, or make necessary repairs, and this has caused losses to the Landlord. The evidence shows significant wax, and crayon and marker writings, on the walls, trim and heater covers. These would have been difficult to remove and paint over and I allow most of the Landlord's claim on these items. I am decreasing the amount claimed for painting by 25% as the paint was nearly one year old when the Tenant moved in, to reflect the lifespan of interior painting, pursuant to policy guideline 40 (see below). I also find the Tenant failed to remove soiled furniture and other debris from the rental unit. Therefore, I allow the **\$1,750.50** for this portion of the claim.

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.]

I accept the undisputed evidence of the Landlord on most of the other claims. However, I do not find the Landlord had sufficient evidence to prove all the items the Tenant allegedly removed without permission. Absent an inventory at the start of the tenancy, it is difficult for the Landlord to establish what was in the rental unit. Nevertheless, I accept the Landlord's verbal testimony that the Tenant removed a smoke detector and batteries, as these were set out in the condition inspection report and were required to be in the rental unit in any event. Likewise I find the Landlord's evidence on the missing garbage cans to be credible, as he witnessed these at the Tenant's new property. I also accept the evidence of the Landlord that the Tenant removed or failed to replace light bulbs, and damaged the mini blinds and window screen.

Therefore, I allow the Landlord **\$571.02** for the above claims, and I have not awarded the Landlord for the fire extinguisher, toilet plunger, garden shovels or tools, the solar lights or the extension cord as there was insufficient evidence on these items.

Section 7 of the Act states:

- (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

[Reproduced as written.]

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.

[Reproduced as written.]

I find that the Landlord has established a total monetary claim of **\$2,371.52**, comprised of the above described amounts (\$1,750.50 + \$571.02) and the \$50.00 fee paid for this application.

I grant the Landlord an order under section 67 for the balance due of **\$2,371.52**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has established a claim for failing to clean, for damage to the rental unit and for some missing items, as I found the Tenant breached section 37 of the Act.

There was a depreciation amount accounted for on the painting of the rental unit and not all of the Landlord's claims about missing items in the rental unit were allowed.

The Landlord is granted a monetary order in the amount of \$2,371.52

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: January 07, 2014

Residential Tenancy Branch

