



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 by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The landlord also requested recovery of the \$50 filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

The tenant had initially submitted an application which was to be heard today but the tenant's application was not actually an application but rather a defence to the landlord's application. In other words, the tenant's application contained no requests for any orders – the tenant had simply thought that an application was required to defend against a claim from the landlord. Since it is not necessary to file an 'application in defence' I advised the parties that the tenant's application would simply be dismissed and the landlord's application considered on its own.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount requested?

Background and Evidence

This tenancy began on July 1, 2012. The rent was \$850 per month. The tenant paid a security deposit of \$425 at the start of the tenancy. Hydro and water were not included in the rent. The parties had agreed on a sum of \$175.00 per month for these utilities. The rental unit was the ground level suite in a house and was brand new when the tenants moved in. Because the rental unit was newly renovated when the tenants moved in, a move-in condition inspection report was not completed. A move-out report was done by the landlord without the participation of the tenant.

According to the parties, this tenancy went very well until the end when the tenants ran into some financial difficulties and were unable to pay the rent for November. The landlord served the tenants with a 10 Day Notice to End Tenancy on November 3, 2013. The parties then apparently agreed that the tenant would vacate the rental unit on November 18, 2013.

The landlord then explained that he was unable to rent the unit for December because the tenant refused to let the landlord show the unit to anyone in November. The tenant acknowledged that he refused to let the landlord show it but was not aware that he was obliged to do so.

According to the landlord, the tenant vacated leaving some rent and several bills unpaid. The landlord also claims the unit was not cleaned properly and that there was some damage. At the hearing, the tenant acknowledged some of the amounts claimed by the landlord but denied others.

Analysis

The landlord has made a total monetary claim against the tenant comprised of the following:

Unpaid rent - November	\$850
Unpaid rent – December	\$850
Utilities (hydro & water) – up to Nov 30	\$110
Washing machine repair	\$139
Stove top repair	\$645
Baseboard & floor repair	\$1200
Cleaning	\$100
Dryer screen rusted	\$15
Repair of fridge door	\$50
TOTAL	\$3959.00

I shall deal with each claim in turn. I note however, that the total amount claimed by the landlord in the evidence package is more than the amount that was originally claimed in the Application for Dispute Resolution. The landlord claimed \$2193.10 in the application and has claimed \$3959.00 in the Monetary Order Worksheet. I advised the landlord at the hearing that because an amendment to the application had not been filed, the landlord's claim would be limited to the amount stated in the original application.

Unpaid rent – November (\$850) – The tenants did not vacate the rental unit until November 16. The rent was \$850 due in advance on the first day of each month. When the tenant failed to pay the rent for November the landlord served the tenant with a 10 Day Notice for Unpaid Rent. The parties then agreed to a move-out date of November 18. However, the fact that the parties came to an agreement as to the move-out date does not mean that the landlord had agreed to accept less than the full rent for November. The full rent was due. The rent was not paid. **I am satisfied that the landlord has established this portion of the claim.**

Unpaid Rent – December (\$850) – The landlord has claimed unpaid rent from the tenant for December. The landlord attempted to re-rent the unit for December but was unsuccessful. The landlord claims that the tenant denied access to the unit for the purposes of showing. The tenant acknowledged at the hearing that the landlord had asked on two occasions to be able to show the unit and that the tenant had said “no”. In any event, **I am satisfied that the landlord has established his claim for the rent for December.** At the time the tenant did not pay the rent for November it was already too late for the tenant to give the required one month’s notice for December. As a result, subject only to the landlord’s duty to mitigate, the tenant remained liable for the rent for December.

Utilities up to Nov 30 (\$110) – At the hearing the tenant acknowledged responsibility for the utilities. **I am therefore satisfied that the landlord has established this portion of the claim.**

Washing Machine Repair (\$139.60) – The landlord makes this claim on the basis that the unit was new renovated with new appliances when the tenant moved in. It was determined by the maintenance company that the reason the machine had malfunctioned was that a child’s sock had become lodged in the washer pump. The tenant testified that they had no idea that the sock had become lodged in the pump and that they do not know how it came to be there. The tenant does not deny it was their son’s sock – the tenant just says that it was not deliberate on their part and that they do not think they should be liable for the cost of this repair. I agree with the tenant on this point. There is no evidence that the tenant deliberately plugged the pump with the sock and it is completely reasonable in my view for the tenant to wash childrens’ clothing in the washing machine. Accordingly, **I dismiss this portion of the landlord’s claim.**

Stove Top Repair (\$645) – The landlord claims that the tenant damaged the stove top and that the estimate for repair is \$645. The landlord provided a copy of this estimate. For their part, the tenant claims that the stove top was used daily for a year during the tenancy and that if it is scratched it is merely normal wear and tear. In this regard, I agree with the tenant. The landlord is not entitled to require that the tenant return the unit to a new condition upon move-out but rather that it be reasonably clean and undamaged except normal wear and tear. **I find that the landlord has not established this portion of the claim.**

Baseboard & Floor Repair (\$1200) – The landlord claims that the tenant damaged the laminate flooring and that there was also damage to the baseboards in certain spots. The landlord submitted an estimate from Jack Barker Finishing Carpenter which states that the cost of replacing the laminate flooring in the living room, dining room and kitchen would be \$1200. The same estimate gives an alternate estimate for repairing the floors by filling rather than replacement and for repairing the baseboards for \$437. The tenant acknowledges that the damage to the baseboards was caused by their child but that the extent of the damage to the floor is being exaggerated by the landlord. In support of this claim the tenant submitted photos of the floor. Based on these photos it is difficult if not impossible to see any damage to the floor. **In the result, I am satisfied that the landlord has established a claim of \$200 with respect to the baseboards but I dismiss the claim with respect to the floors.**

Cleaning (\$100) – The landlord did not submit any photos of the unit at the end of the tenancy but the tenant did. The tenant also testified that he and his mother cleaned the unit from “top to bottom”. Based on the tenant’s photos and testimony I am satisfied that the tenant left the unit reasonably clean as required by Section 37 of the Act. **I dismiss the landlord’s claim for cleaning.**

Dryer screen and Fridge Door (\$65) – I have reviewed the file with respect to both of these claims and am not satisfied that there is sufficient evidence before me to make a finding that the tenant is liable for damage to these items. **I therefore dismiss this portion of the landlord’s claim.**

Conclusion

I have found that the landlord has established a total monetary claim against the tenant in the amount of \$2010.

I am also satisfied based on the outcome of this claim that the landlord is entitled to recover the \$50 filing fee from the tenant.

I therefore order that the landlord retain the deposit of \$475 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1585. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 4, 2014

Residential Tenancy Branch

