



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord and the Tenant. The Landlord applied for a Monetary Order for: damage to the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee for the Application.

The Landlord appeared for the hearing with an advocate who only assisted the Landlord during the hearing. The Tenant appeared for the hearing but provided no written evidence prior to the hearing. No issues were raised by any of the parties in relation to the service of the Landlord’s evidence and the Notice of Hearing documents.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. Both parties were provided the opportunity to present their evidence 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.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for damage to the rental unit and loss of rent for December, 2013 and half of January, 2014?

Background and Evidence

The parties agreed that this tenancy started on June 25, 2013 for a fixed period of three months which then continued on a month to month basis. The Tenant paid the Landlord a security deposit in the amount of \$287.50 on July 1, 2013 which the Landlord was given written consent to retain at the end of the tenancy. Rent was payable by the

Tenant in the amount of \$550.00 on the first day of each month. A written tenancy agreement was completed and provided as evidence for this hearing. The Landlord completed a move in and move out condition inspection report at the start and end of the tenancy which was provided as evidence for this hearing.

The Landlord testified that the tenancy was ended when the Tenant failed to pay rent for the month of December, 2013 and was then subsequently issued with a notice to end tenancy for unpaid rent on December 4, 2013. The notice was provided as evidence and shows that the effective date of vacancy was December 14, 2013. The Tenant failed to pay the rent but moved out of the rental suite on the effective day of the notice.

The Landlord testified that the Tenant failed to clean the rental suite and left damages to the rental suite which was not repairable until January 15, 2014 due to the extent of the damages and the timing over the holiday period. As a result, the Landlord claims **\$825.00** in lost rent from the Tenant.

The Landlord made the following claims for damage to the rental unit and provided the following evidence to support the Application:

- **\$120.00** for cleaning of the rental suite including the carpets as evidenced by an invoice. The Landlord testified that the Tenant had failed to clean the kitchen cupboards, appliances, windows, floors, bathrooms, walls and closets. The Landlord testified that the carpets were not cleaned as the Tenant had pet cats inside the rental suite. The Landlord pointed to the condition inspection report which supported the Landlord's testimony and referred to the dirty condition marked as "DT" on the report.
- **\$179.10** for replacement of the hall way closet, bathroom and bedroom door which was damaged by the Tenant. The Landlord provided a number of photographs which indicated damage and holes to these doors. The Landlord provided an invoice which included a list of purchased items, which when calculated, indicated the amount claimed for above. The damage to the doors was also indicated on the condition inspection report.
- **\$630.00** for repair damage which had been completed by the 'In house' building maintenance staff. The Landlord provided a number of photographs which indicated holes in the entry way, bathroom, bedroom and living room walls which all had to be filled in, sanded down and the entire wall areas had to be painted over. These damages were also indicated on the condition inspection report. This cost also included the cost for the installation of the damaged doors.
- **\$5.64** for the cost of the photographs in preparation for this hearing.

The Tenant testified that she had vacated the rental suite as per the notice to end tenancy and had not paid rent for December, 2013. The Tenant did not deny the damages being claimed by the Landlord but made the following submissions:

- The rental suite was cleaned over an 8 hour period by the Tenant and her friend
- The Tenant was unable to be present for the complete duration of the move out inspection report and left it to the Landlord to complete the remainder of the move out condition inspection report.
- The damage to the wall in the bathroom was caused by mold damage which was verbally reported to the Landlord as being present throughout the rental suite.

The Landlord confirmed that the damage to the bathroom wall was reported by the Tenant to him after she had been issued with the notice to end tenancy and as a reason for not paying rent.

Analysis

I have considered the following provisions and I have based my findings on the evidence as a whole on the balance of probabilities, rather than focusing on one particular aspect of the evidence:

- 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 Landlord. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, section 7(2) of the Act requires a party making a claim for compensation to do what is reasonable to minimize the damage or loss.

- Section 37(2) of the Act requires a Tenant to leave a rental suite at the end of the tenancy reasonably clean and undamaged except for reasonable wear and tear.
- Section 26(1) of the Act stipulates that a Tenant must pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act.
- Policy guideline 1 to the Act details the responsibility of both the Landlords and Tenants for residential premises. In relation to carpets, the guideline explains that at the end of the tenancy, the Tenant is expected to steam clean or shampoo the carpets if they had pets which were not caged.
- In dispute resolution proceedings, Section 21 of The Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.
- Policy guideline 3 to the Act explains that in a month to month tenancy, if the tenancy is ended by the Landlord for non payment of rent, the Landlord may recover any loss of rent suffered for the next month as a notice given by the Tenant during the month would not end the tenancy until the end of the subsequent month.

By taking into consideration the above provisions in assessing the Landlord's claim, I find that the Landlord has proved his claim in the amounts requested, namely **\$1,754.10**; except for the costs of the photographs which the Act does not allow me to award as these are preparation costs for dispute resolution that have to be borne by each party.

I find that the Tenant failed to pay rent for the month of December, 2013 and did not have grounds under the Act to withhold rent. As per policy guideline 3, the Landlord would have been entitled to lost rent for January, 2014 but mitigated his loss as required by the Act and claims for only two weeks of lost rent in the month of January, 2014. I also accept that it was not possible for the Landlord to have completed all the repair damage in the remainder of the two holiday weeks left in the December, 2013 period.

In relation to the damages claimed by the Landlord, I find that based on the condition inspection report and the photographic evidence, the Tenant failed to leave the rental suite reasonably clean, including the carpets (when she had pets) and undamaged at the end of the tenancy.

I found that the Tenant's submission that the rental suite was left clean at the end of the tenancy is unsupported and contradicted by the Landlord's evidence. Furthermore, the evidentiary value of a condition inspection report cannot be doubted or undermined because a party failed to be present or be represented for the duration of the inspection.

I also find that the Tenant and Landlord disagreed whether the damage caused to the bathroom wall was due to the mold. However, I find that the Tenant's submission that she had reported mold issues to the Landlord is not supported by written evidence and on the balance of probabilities; I find that this damage was caused by the Tenant.

As the Landlord has been successful in this claim, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,804.10**.

The Landlord confirmed that their total claim in the Application included the deduction of the Tenant's security deposit in the amount of \$287.50. As the Tenant agreed that the Landlord can deduct this amount from the Landlord's claim, I further adjust the amount awarded to the Landlord in the amount of \$1,516.60.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,516.60**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment

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: May 12, 2014

Residential Tenancy Branch

