



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Narod Properties Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This is an application filed by the landlord for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on July 1, 2010 on a fixed term tenancy ending on June 30, 2011 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$715.00 payable on the 1st of each month. Notices of rent increase effective July 1, 2013 show that the current monthly rent is \$785.00 per month. A security deposit of \$357.50 and a pet damage deposit of 357.50 were paid on June 23, 2010. A condition inspection report for the move-in was completed on June 25, 2010. The landlord states that the tenant gave notice to vacate the rental unit on January 30, 2014 for February 28, 2014. The landlord received the tenant's forwarding address in writing on January 30, 2014.

The landlord seeks a monetary claim of \$1,188.77. This consists of \$52.33 in unpaid rent, \$178.56 in unpaid utilities, \$182.00 in general cleaning costs, \$700.00 for carpet replacement, \$446.88 for stove replacement and \$294.00 in garbage removal.

During the hearing the tenant confirmed in his direct testimony the landlord's claims for \$52.38 for overholding the rental unit, \$178.56 in unpaid utilities and \$294.00 for garbage removal based upon the landlord's submitted copies of the invoices. The tenant also confirmed that he gave permission to the landlord to retain the \$357.50 pet damage deposit and the \$357.50 security deposit to offset the landlord's claims.

The tenant disputes the landlord's claims for \$182.00 in general cleaning, \$700.00 in carpet replacement costs and \$446.88 for stove replacement costs. The landlord states that the tenant left the rental in a very dirty state. The tenant disputes this stating that he cleaned the rental thoroughly. The landlord disputes this referring to the incomplete condition inspection report for the move-out and the landlord's photographs showing the condition of the rental. The landlord clarified the claim for \$700.00 in compensation for carpet replacement as the owner decided that upon inspection of the dirty and stained carpeting that he is replacing the carpet with laminate flooring. The tenant disputes this stating that he authorized the landlord to clean the carpets and is not aware of any significant damage to the old carpet. The landlord stated that the carpet was approximately 6-8 years old. The landlord clarified that he is seeking compensation for \$700.00 as it is his opinion that had he replaced the carpet it would have cost approximately \$2,000.00 to \$2,200.00 and that the tenant should be responsible for ½ of the useful lifespan of the carpet. The tenant disputes the lifespan of the carpet stating that he has lived there for 3 years and that the carpet's age was much longer. The landlord states that the stove was left in such a state that it required replacement. The tenant disputes this stating that the stove was left clean and in usable condition. The landlord disputes this relying on a photograph of the inside of the oven. Upon review the photo shows a blurred photo of the inside of the oven, but does not provide sufficient details on the condition. The landlord also relies on the invoice from the cleaning contractor who noted on the invoice that "oven burnt, could not be cleaned burner cups burnt and rusty". The landlord stated that upon review the stove was not reusable and had to be replaced. The tenant argues that stove is very old. The landlord clarified that the age of the stove was approximately 10 years as that is when the rental property was converted for rental and that all of the appliances were new at that time 10 years ago.

Analysis

As the tenant has admitted the landlord's claim for \$52.33 in unpaid rent, \$178.56 in unpaid utilities and \$294.00 for the cost of garbage removal the landlord has established a monetary claim for the above noted claims totalling, \$524.89.

I am satisfied that the landlord has established a claim for general cleaning, however not for the amount of \$182.00. The landlord has submitted an invoice dated March 3, 2014 from the cleaning contractor of \$105.00 with no explanation of the \$77.00 difference. The state of the rental unit is confirmed by the tenant's confirmation that the unit required cleaning and the photographs admitted by the tenant as being a true condition of the rental unit at the end of the tenancy. The landlord is granted a monetary claim of \$105.00 for this portion of the claim.

I find in reviewing the evidence of both parties that I prefer the evidence of the landlord over that of the tenant. The tenant has confirmed in his direct testimony that photographs #1, 6, 11, 13, 14, 15, 17 are an accurate reflection of the condition of the rental unit at the end of the tenancy and states that the remainder of the photographs were taken prior to the end of the tenancy. The landlord admits that some of the photographs were taken prior to the end of the tenancy, but states that photographs #2, 3, 4, 5, 7, 9, 10, 12, 16 and 18 are also accurate displays of the rental unit at the end of the tenancy. The landlord's evidence support the claims made by the landlord. However, the landlord did not replace carpet, but instead installed laminate. The Residential Tenancy Branch Policy Guidelines states that the useful life of a carpet is 10 years. As the landlord has estimated that the carpet is 6-8 years old, I will take the mean as 7 for approximation. I find that the landlord has established a loss of the carpet for 3 years. The landlord relies on an invoice as reference that the flooring was replaced with laminate and states that replacement of a like carpet would have cost the landlord \$2,000.00 to \$2,200.00 based upon experience. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that although the landlord has established that a loss occurred as result of the damage caused by the tenant, the landlord has failed to provide sufficient evidence to satisfy me of the \$700.00 monetary claim. The landlord has not provided any proof of an actual amount of what the carpet would have cost had it been replaced. However,

as damage has been found to have been caused by the tenant, I grant a nominal award of \$600.00. This is based upon the landlord's estimate on the lower range of \$2,000.00 divided over a 10 year lifespan for 3 years of useful life left.

As for the landlord's claim of \$446.88 for replacement costs of the stove, I find that I prefer the evidence of the landlord over that of the tenant. I am satisfied based upon the landlord's direct testimony and the invoice from the cleaning contractor over the condition of the stove that the stove was rendered unusable again. The Residential Tenancy Branch Policy Guidelines states that the useful lifespan of a stove to be 15 years. In this manner based upon the undisputed evidence of the landlord, I find that the tenant shall be responsible for the remaining useful lifespan of the stove for the last 5 years as the landlord has stated that the stove was approximately 10 years old. On this basis, I find that the tenant is responsible for 1/3 of the replacement cost of the stove for \$148.96.

The landlord has established a total monetary claim of \$1,378.85. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the combined pet damage and security deposits of \$715.00 and I grant a monetary order under section 67 for the balance due of \$663.85. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$663.85.

The landlord may retain the combined pet damage and security deposits.

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: July 10, 2014

Residential Tenancy Branch

