



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Preliminary Issues

The Landlord submitted an application for dispute resolution on May 15, 2014, where she had written \$1063.99 as the amount of her monetary claim in the mid section of the application. However, in the Details of the Dispute the Landlord listed the items claimed as follows: damage to the unit \$1063.99; loss of May rent \$1800.00; unpaid utilities \$39.60; \$7.00 NSF charge; plus NSF \$42.50 for a total of \$2,910.59.

In the evidence package submitted September 10, 2014, the Landlord included a Monetary Order Worksheet which indicated a total claim of \$3,471.17; however, the Landlord did not file or serve the Tenant an amended application for dispute resolution increasing her claim amount.

Based on the above, I find the Tenant was sufficiently notified that the Landlord was seeking \$2,910.59 in monetary compensation, as indicated on the application for dispute resolution in the details of dispute, and not \$3,471.17 as provided in the evidence. Accordingly, I considered the claim for \$2,910.59 and the difference is hereby dismissed, without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 15, 2014, by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The parties gave affirmed testimony and confirmed receipt of evidence served by the Landlord. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on September 1, 2013 and was scheduled to end April 30, 2014, at which time the Tenants were required to move out. The tenancy agreement listed three co-tenants who were required to pay rent on the first of each month in the amount of \$1,800.00. On or around August 30, 2013 the Tenants paid \$900.00 as the security deposit. The parties signed the move in condition inspection report form agreeing to the condition of the unit on August 31, 2013 and September 1, 2013. Although the Tenant was present during the move out inspection on April 30, 2014, she refused to sign the condition inspection report form. The Landlord received the Tenant's forwarding address during the move out inspection on April 30, 2014.

The Landlord testified that the rental unit was a self contained basement suite that was constructed brand new in 2010. The Landlord submitted that she suffered losses because the Tenants prevented her from gaining access to show the unit to prospective tenants and the Tenants left the rental unit damaged and requiring cleaning.

In support of her claim the Landlord submitted documentary evidence which included receipts, estimates for repairs, photographs, the condition inspection report form, the returned payment received for utilities, and a two page monetary order work sheet.

The Landlord testified that the damages were indicated on the condition inspection report form and in the photographs. She stated that she claimed for loss of rent for May 2014 because the Tenants were very difficult to deal with when she was attempting to schedule showings. Then the Tenants posted a note on their door, as provided in her photographs, which prevented her access. The Landlord submitted that she had set up a showing for some out of town applicants and when they arrived they decided not to go inside and see the unit because of the Tenant's note. The unit was not re-rented until August for a tenancy that was effective September 1, 2014.

Upon review of the claims for damaged items, the Landlord stated that the fridge crisper, which had a hairline crack, missing fridge dairy cover, and counter top have not yet been replaced. She argued that they were all on order and confirmed she had not provided evidence of that or of actual amounts paid.

The Tenant testified that she was concerned that only her name was listed as respondent to this dispute as there were three Tenants listed on the tenancy agreement.

The Tenant submitted that they had put up a sign limiting the Landlord's access for showings because the Landlord was walking into the unit without proper notice and without knocking. The notices they did receive were in the form of an email which stated the Landlord would be showing the unit during a three day period between a set start and end time; however, there was no specific time for a particular appointment.

The Tenant argued that the mark on the counter was present at the start of her tenancy and that she had noticed the cupboard hanging from the ceiling on the first day. She said the Landlord told them that the electrician did that to the cupboard when he removed it to install the heat pump. Also, as for the claim for a dead bolt, the Landlord had refused to provide them with a new deadbolt at the start of the tenancy so they did not understand why they would have to pay for one when they had returned two keys. The Tenant stated that there was an issue with burnt out light bulbs at the start of their tenancy and that they should not be responsible to pay for light bulbs when a tenancy has ended. She said she was not aware of the condition of the other bedrooms, at the end of the tenancy.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 26 of the Act stipulates that a tenant must pay rent and utilities in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

In this case the evidence supports that the Tenants were required to pay the cost of their utilities and submitted payment in the form of a cheque for \$39.60. The cheque was returned by the bank NSF and the Landlord was charged a fee of \$7.00.

Based on the above, I find the Landlord had met the burden to prove her loss incurred for the unpaid utilities and NSF charges. Accordingly, I grant the Landlord her claim of **\$46.60** (\$39.60 + \$7.00).

Section 29 of the Act provides that a landlord may gain entry into the rental unit providing the landlord provide at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

In this case the Tenant provided verbal testimony that the Landlord had provided notice, by email, that she would be showing the rental unit during a three day period for the purpose of showing the rental unit to prospective tenants, but argued the notice was not specific enough so they put up a note denying entry.

After consideration of the foregoing, and in the absence of documentary evidence to the contrary, I find the Tenants breached the Act by denying the Landlord access to show the unit, which prevented the Landlord from re-renting the unit and caused the Landlord to suffer a loss of rent for May 2014. Accordingly, I find the Landlord has met the burden of proof and I grant her loss of rent for May 2014 in the amount of **\$1,800.00**.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

The Landlord's application indicates her claim was for damage to the rental unit in the amount of \$1063.99. The Landlord submitted receipts for materials and repairs which totalled \$247.22 that included \$41.03 from General Paint, \$48.69 from home depot and \$157.50 for carpet cleaning.

Based on the above, I find the Landlord has met the burden of proof to establish the claim for the above mentioned damages. Accordingly, I grant the Landlord **\$247.22** for damages.

The Landlord submitted an estimate indicating that the cost to replace the counter would be \$458.50 plus \$125.00 to cut out for the sink; a hand written note that the cost to replace the crisper and dairy cover for the fridge would be \$65.94 plus 12% tax; and

the estimate for painting would be \$350.00. The Landlord confirmed that the repairs were not yet completed to the counter or the fridge but argued that parts were on order. Her monetary order work sheet indicates the Landlord was seeking \$120.00 for 4 hours labour that it took them to paint the bedroom themselves instead of hiring the painter.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item.

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.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

After consideration of the foregoing, I find that although the counter is now cosmetically less appealing it can still be used for its intended purpose. Also, alleged damage to the crisper and dairy cover has not prevented their intended use as they are being used by the current tenants. Therefore, in absence of proof of the actual loss to repair or replace the counter and fridge parts, I find the Landlord is entitled to nominal damages in the amount of **\$75.00**.

The evidence supports the Landlord spent 4 hours painting the bedroom, which I find to be a reasonable claim. Accordingly, I grant the Landlord labour costs of **\$120.00**.

In the absence of proof to support the balance of the amount claimed on the Landlord's application or the additional amounts listed on the monetary order worksheet, those amounts are hereby dismissed, without leave to reapply.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Utilities and NSF	\$ 46.60
Loss of Rent for May 2014	1,800.00
Damages	247.22
Nominal damages	75.00
Labour to paint	120.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,338.82
LESS: Security Deposit \$900.00 + Interest 0.00	<u>-900.00</u>
Offset amount due to the Landlord	<u>\$1,438.82</u>

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the Landlord can recover the full amount owed from all or any one of the Tenants.

In this case the Landlord named only one of the three Tenants as a respondent to this dispute. Therefore, the responsibility falls to the named Tenant to pay the monetary amount awarded to the Landlord. The Tenant can then collect any apportioned amounts from the other Tenants.

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,438.82**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: September 19, 2014

Residential Tenancy Branch

