



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing. The landlords were represented by the male landlord, C.G., and where I refer to landlord in the singular, it is C.G. to whom I refer.

The landlords applied to retain the security deposit, but the parties were in a hearing on January 7, 2015 in which double the security deposit was awarded to the tenants. As no security deposit remains for the landlord to claim, I dismiss that part of the landlords' claim.

At the hearing, the landlords amended their claim to remove a claim for unpaid rent from August 2008. The hearing therefore dealt exclusively with their claim for the cost of repairs.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on September 1, 2006 and ended on September 22, 2014. The parties agreed that the tenancy agreement prohibited smoking in the rental unit and they further agreed that the tenants smoked in one of the bedrooms in the unit. They further agreed that the tenants surrendered the keys to the unit one week before their notice to end tenancy took effect and that when the parties conducted a move-out condition inspection of the unit, the landlord told them they did not need to worry about cleaning carpets or painting because he would be renovating the unit.

The landlord testified that when his contractor inspected the unit to provide an estimate of the cost of renovations, the contractor said that the room in which the tenants smoked was so heavily stained with nicotine, it would require multiple coats of paint and the door would need to be replaced as it was so badly damaged. The landlord testified that when he told the tenants that they did not need to worry about painting, he was unaware that the room required the extent of repair that it did.

The tenants testified that had they known that the room required painting, they would have done it themselves.

The landlords provided a copy of an invoice showing that they paid \$866.25 to have the room repainted, ceiling redone and bedroom door replaced. They seek to recover this cost from the tenants as well as the \$50.00 filing fee paid to bring their application.

Analysis

In order to prove their claim, the landlords must prove on the balance of probabilities that the tenants contravened the *Residential Tenancy Act* or tenancy agreement, that a loss resulted from that breach, proof of the value of the loss and proof that the landlords acted reasonably to mitigate their losses.

Section 37(2) of the Act requires tenants to leave the rental unit in reasonably clean condition and undamaged except for reasonable wear and tear. The tenants did not dispute that they smoked in the room in question and did not dispute that the walls, ceiling and door were heavily stained with nicotine. They simply relied on the landlord having told them that they did not need to worry about painting and believe that this excuses them from liability. I find that the tenants caused damage to the rental unit which goes beyond what may be characterized as reasonable wear and tear thereby breached their obligations under the Act.

When tenants surrender keys to a rental unit, they are surrendering possession and are communicating to the landlord that they understand that their opportunity to access the unit is at an end. I accept that the landlord could not have known the extent of the damage to the unit until a professional was able to inspect the affected room. I find that the landlord is not estopped from claiming against the tenants for the cost of repairing the damage and I find that the landlords suffered a loss as a result of the tenants' breach of the Act.

I find that the landlords have proven that the value of the loss was \$866.25 and I find that given the extent and type of the damages, there was nothing they could have done to minimize their losses.

I find that the landlords have proven their claim and I award them \$866.25. I further find that as they have been successful in their claim, they should recover the \$50.00 filing fee paid to bring their application and I award them an additional \$50.00 for a total entitlement of \$916.25. I grant them a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords are granted a monetary order for \$916.25. I note that the tenants have an outstanding monetary order against the landlords for \$1,472.57. The parties are encouraged to set off these awards as against each other, which leaves \$556.32 payable by the landlord to the tenants.

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 23, 2015

Residential Tenancy Branch

