



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, MND

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlords application is a request for a monetary order for \$1125.00, and a request to retain the full security deposit towards the claim.

The tenants application is a request for a monetary order for \$2775.00 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties and their witnesses the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues are whether or not the landlord has established monetary claim against the tenant, and whether or not the tenant has established monetary claim against the landlord.

Background and Evidence

On December 7, 2014 the tenants paid a security deposit of \$925.00 and the tenants moved into the rental unit on December 22, 2014.

The monthly rent was set that \$1850.00 due on the first of each month.

The parties agree that at a subsequent fixed term tenancy agreement had been signed with an end the tenancy date of July 31, 2014.

The tenant subsequently vacated the rental unit on July 13, 2014.

Landlords application

The landlords are requesting a monetary claim of \$1125.00.

The landlords testified that when the tenant vacated the rental unit he did not do a very good job of cleaning and as a result, a further five hours of cleaning was required, for which they were are requesting \$20 per hour.

The landlords further testified that when the tenant vacated he abandoned tires and furniture and garbage outside of the rental unit and the cost to remove and dispose of that was \$105.00 including dump fees.

The Landlords are also asking for \$100.00 to repair a hole in the ceiling which they testified was caused by the tenant installing a light without getting permission to do so.

The landlords also testified that a custom-built wooden cabinet had burn damage on it and therefore they're asking for \$75.00 for the time and materials to repair that cabinet.

The landlords are also asking for \$50.00 for time spent removing over 200 stickers that had been placed on the walls and the ceiling in the rental unit.

The landlords also testified that at the end of the tenancy they found the paint in the bathroom was peeling off the walls and ceiling and they believe this was the result of the tenants failing to use the bathroom fan. They testified that they checked the inside of the bathroom fan and it was almost completely clean showing it had seldom been used, whereas the fan in the downstairs suite had a great deal of dust inside the fan from use. They therefore believe that the tenants should be held liable for their costs of approximately \$100.00 and supplies, and \$500.00 labor to repair this damage.

The landlords also stated that when the tenants vacated the patio light was left broken and the cost to replace it is \$45.00

The witness for the landlord also testified that she viewed the rental premises prior to the tenants moving in and at that time it was in very good repair and in clean condition.

The witness for the landlord further testified that when the tenants vacated she viewed the rental unit and it was not in good condition, the bathroom paint was badly peeling, there were stickers all over the walls and ceiling, a hole in the ceiling, broken light and lots of junk outside the rental unit. She further testified that the rental unit did not look like it had been cleaned very well.

Under questioning by the tenant, the landlord's witness testified that she was in the rental unit approximately August 2014 after the tenants vacated.

In response to the landlord's testimony the tenant testified that the rental unit was left as clean as he could get it, and he believes it did not need any further cleaning although he admits he did not clean the windows.

The tenant also admits that he did leave some tires, and an old desk outside the rental unit to be picked up, by the garbage collection.

The tenant also admitted that he did install a light fixture without the landlords permission; however the landlord had seen it on numerous occasions and did not make any comment about it and therefore he believed that the landlord had accepted the installation.

With regards to the burn on the cabinet, the tenant's mother testified that these Burns had been accidentally caused by some small candles.

The tenant also testified that they did put numerous stickers on the walls and ceilings in the rental unit.

The tenants further testified that they believe that they have no liability whatsoever for the peeling paint in the bathroom of the rental unit stating that they always use the fan whenever they used the shower. They believe that the peeling paint was the result of a poor paint job and that it peeled under normal daily use.

The tenant's mother testified that she did take apart the patio light as it was not working and she had to take the glass panels out to attempt to change the bulb. She does not believe however that the lamp was damaged, it just needed the glass panels put back in place.

In response to the tenants claim that the paint peeled under normal use, the landlords testified that they lived in the rental unit for 11 years prior to the tenants moving in and

never had such a problem with the paint. They further stated that the bathroom had been painted approximately 3 years before the tenant moved in.

Analysis

Cleaning

Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required

I therefore deny the claim for cleaning.

Abandoned tires and furniture left behind

It is my finding that the tenant is liable for the landlords cost to remove the abandoned tires and furniture. The tenant testified that he left the tires and garbage in front of the property for garbage pickup, however I find it unlikely that the normal pick up would have remove these items, and therefore the landlord would be required to remove these items to the dump.

I therefore allow this portion of the claim.

Ceiling damage

I also allow the landlords claim for the cost of repairing a hole in the ceiling made by the tenant's when they installed a light without getting permission to do so. The fact that the landlords had seen the light after it was installed does not mean that a tenant is not liable to repair the damage when they vacate.

Burn marks on cabinet

I also allow the landlords claim for the cost of repairing the cabinet as the tenant's mother admitted that the damage was caused by candles she placed on that cabinet.

Removing stickers

The tenant has also admitted that numerous stickers were placed on the walls and ceiling in the rental unit and that they were not removed when he vacated the rental unit.

I therefore also allow the landlords claim for their time to remove stickers.

Bathroom paint peeling

It is my finding that the landlords have not met the burden of proving that the peeling paint in the bathroom was a result of any negligence on the part of the tenants.

It is only conjecture on the landlord's part that the damage was caused by the tenants failing to use the fan in the rental property as they were not present to witness whether or not the fan was being used. The tenant has testified that the fan was used every time they used the shower in the bathroom ,and there is no direct evidence to prove otherwise.

The landlords claim that the fan was clean, is insufficient to meet the burden of proving that the tenants failed to use the fan.

I therefore deny the landlords claim for repairing the bathroom paint.

Outside patio light

I will allow the landlords claim for the damaged outside patio light as the tenant's mother has admitted that she took the light apart in an attempt to change a lightbulb however there's been no evidence supplied to show that the tenant's mother ever put the light back together.

Filing fee

Since I have allowed a portion of the landlords claim, I will also order that the tenant bear the cost of the filing fee.

Therefore the total amount of the landlords claim that I have allowed is as follows:

Removing abandoned tires and furniture	\$105.00
Repair damaged ceiling	\$100.00
Repair burned cabinet	\$75.00
Time to remove stickers	\$50.00
Replace damaged patio light	\$45.00
Filing fee	\$50.00
Total	\$425.00

Tenants claim

The tenant is argued that he paid a security deposit of \$925.00 and he believes the full amount should be returned.

The tenant also argues that the landlord illegally cashed a second cheque that was made out in error for April 2014 and applied the amount to the July 2014 rent and he believes that full amount should be returned.

The tenant admits that he moved out of the rental unit on July 13, 2014; however he states that it was because the landlord breached the Residential Tenancy Act, and the tenancy agreement by removing the deck without giving him any notice whatsoever, and by causing construction noise it made it very uncomfortable to live in the rental unit.

The tenant further testified that he had been willing to pay a portion of the July 2014 rent, however since the landlord was unwilling to negotiate reasonably he now believes he should not have to pay anything.

In response to the tenants claim, the landlord stated that they feel they have a claim against the full security deposit and therefore it should not be returned.

The landlords further testified that the tenant was in a fixed term tenancy to the end of July 2014 however the tenant failed to pay the July 2014 rent and therefore they had no choice but to cash the cheque that was previously given to them in April of 2014, to cover the July 2014 rent.

The landlord's further testified that they do not believe they breached the act or the tenancy agreement, because the need to repair the deck was discovered during a building inspection and it was found that the deck was unsafe. Therefore they felt it was an emergency to get the deck repaired as soon as possible.

The landlords also dispute the tenants claim that the tenant did not know they were going to demolish the deck, stating that the tenant even assisted them to remove numerous plants from the deck so that the work could commence.

Landlords further state that they had been willing to negotiate a lower rent for loss of use of the deck, however the tenant did not accept their offer of a \$25.00 rent reduction and therefore no final agreement was ever reached.

Analysis

Security deposit

Since I have allowed \$425.00 of the landlords claim, I am not willing to order the full return of the tenant security deposit and will only be ordering the return of the difference.

July 2014 rent

It is my finding that the tenants did not have the right to end the tenancy without giving the required Notice to End Tenancy or prior to the end of the fixed term of their tenancy.

The tenants claim that the landlords breached the Residential Tenancy Act and their tenancy agreement, however Section 45(3) of the Residential Tenancy Act states;

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(3) If a landlord has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure,

the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

First of all, the tenant has provided no evidence to show that the landlord was given written notice of a failure to comply with a material term of the tenancy agreement.

Further, it is also my finding that, even if the landlord had breached the tenancy agreement, the evidence does not show that the landlord was given a reasonable time to rectify that breach.

Therefore the tenant is liable for rent to the end of July 2014; however it is my decision that the tenants must be given a reasonable reduction in rent for the loss of use of the deck, and it is my finding that the landlords offer of a \$25.00 rent reduction is unreasonable.

Decks on rental properties get the most use during the summer months, and therefore since the tenant lost the use of this deck in the month of July, it is my decision that a 25% rent reduction is reasonable in this case.

Therefore, although I deny the tenants request for the return of the full July 2014 rent payment that was made with the April 2014 rent cheque, I will order that the landlords return \$462.50 of that rent.

I also allow the tenants request for recovery of the \$50 filing fee.

Conclusion

I have allowed \$425.00 of the landlords claim and therefore I have sent that off against the tenants \$925.00 security deposit, plus the \$462.50 and \$50.00 filing fee I allowed in the tenants claim and I have issued an order for the landlord to pay \$1012.50 to the tenant.

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: March 19, 2015

Residential Tenancy Branch

