



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to where the tenants reside on March 5, 2015.

With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on May 1, 2013, continue for one year and become month to month after that. The rent at the end of the tenancy was \$850 per month payable in advance on the

first day of each month. On May 1, 2013 the tenant(s) paid a security deposit of \$375. The tenancy ended on February 12, 2015 after the tenants complained about the conduct of the upstairs tenant. .

Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant 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 and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

There is a dispute between the parties as to the condition of the rental unit at the end of the tenancy. The landlord testified the tenants caused significant damage. The tenants dispute this and they alleged damage pre-existed the tenancy or amounted to reasonable wear and tear. The landlord failed to prepare a Condition Inspection at the start and end of the tenancy. However, there are terms in the tenancy agreement relating to the condition of the tenancy.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord has established a claim in the sum of \$75 for the cost of fixing wall damaged. I determined the tenants caused the damaged and the amount claimed is reasonable.
- b. The landlord claimed the sum of \$441 for the cost of material. This claim includes approximately \$300 for painting supplies and material. Policy Guideline

#40 Useful Life of Building Elements provides the average life expectancy of an internal paint job is 4 years. I find the rental unit was freshly painted prior to the tenancy as stated in the tenancy agreement. The tenancy lasted 22 months. In the circumstances after considering depreciation and reasonable wear and tear I determined the landlord is entitled to \$250.

- c. I determined the landlord is entitled to \$62.50 for the cost of time to pick up the material.
- d. The landlord claimed the sum of \$160 for the 8 hours of cleaning. After considering the photographs and the evidence presented I determined the landlord entitled to \$120.
- e. I determined the landlord is entitled to the sum of \$40 for the cost of cleaning the hood.
- f. The landlord claimed \$250 for the cost of labour for painting the house based on 10 hours of labour. Policy Guideline #40 provides the life expectancy of an internal paint job is 4 years. The tenancy lasted 22 months. I determined the landlord is entitled to \$135 of this claim.
- g. I determined the landlord is entitled to \$98.10 for the cost of changing the locks. The tenants acknowledged responsibility for this claim.
- h. I determined the landlord is entitled to \$200 for the cost of carpet cleaning. The tenants acknowledged responsibility for this claim.
- i. I determined the landlord is entitled to \$210 for the cost of replacing the stove.
- j. I dismissed the claim of \$233 for the cost of replacing the counter top as the landlord failed to prove the tenants caused the damage.
- k. I determined the landlord is entitled to \$205.41 for the cost of utilities. The tenants acknowledged responsibility for this claim.
- l. I determined the landlord is entitled to \$60 for the cost of garbage removal.
- m. The landlord claimed the sum of \$850 for the loss of rent for March 2015. The tenants testified they were forced to leave because of the aggressive conduct of the downstairs tenants. They testified they advised the landlord of the problem and he failed to take sufficient steps to protect them.

The Residential Tenancy Act provides that where a tenant wishes to end a month to month tenancy, the tenant must give the landlord a clear months notice before the end of the rental payment period to be effective at the end of the ensuing rental payment period. The tenants also have a right to end the tenancy early in accordance with the provisions of section 45(3) of the Residential Tenancy Act which provides as follows:

Tenant's notice

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

The tenants failed to give the landlord written notice of their problems with the upstairs tenants and failed to give the landlord a reasonable period to rectify the situation. I determined the landlord sufficiently attempted to mitigate his loss. He advertised on Craigslist on February 16, 2015. He was not able to find someone to rent the rental unit for March. I determined the landlord is entitled to \$850 for loss of rent for March.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$2306.01 plus the \$50 filing fee for a total of \$2356.01.

Security Deposit

I determined the security deposit plus interest totals the sum of \$375. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1981.01.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: June 19, 2015

Residential Tenancy Branch

