



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing reconvened as a result an adjournment. The hearing was originally set for August 13, 2015 and was continued on November 30, 2015 where it completed, comprising of nearly three full hours of hearing time. The matter was heard on this date and completed. This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

The relationship between these two parties is an acrimonious one. Both parties made allegations of the other lying, deceit and fraud. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, as this matter was conducted over two separate dates and 3 hours of hearing time, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows:

The tenancy began on December 1, 2009 and ended on January 31, 2015. The tenants were obligated to pay \$1109.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$512.50 security deposit and \$512.50 pet deposit. The unit was a fully furnished suite. Written condition inspection reports were conducted at move in and move out with both parties present and participating.

The landlords stated that they were very shocked and surprised at the condition of the unit at move out. The landlords stated the unit was dirty and had some minor damage and some items were missing. The landlords stated that much of the unit was renovated “about 20 years ago”. The landlords stated that the unit was in very good condition when the tenants moved in. The landlords stated that the unit was not rentable when the tenants vacated. The landlords stated that the tenants acted carelessly and recklessly which caused much of the damage. The landlords stated that they have been more than generous by not claiming for all the damages caused by the tenants. The landlords stated that they are seeking \$1921.99 for damages and cleaning.

The tenants gave the following testimony:

The tenants adamantly dispute the landlords’ entire claim. The tenants stated that the unit was “old and tired” when they took possession of it. The tenants stated that many of the deficiencies the landlord has pointed out were there at the beginning of the tenancy and that was the reason they refused to sign the move out condition inspection report. The tenants stated much the majority of the items the landlords are claiming for are 20 years old or more. The tenants stated that the landlord is attempting to renovate and update the unit at their expense.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, **the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlords’ application breaks down into two sections, they are; cleaning and the second is repairs and replacement of items.

I address the landlords’ claims and my findings as follows.

1. Repairs and Replacement of items in the suite - \$1448.99.

The tenants adamantly dispute this portion of the landlords' application. The tenants stated that the unit was very tired and worn when they took possession in 2009. The tenants stated that much of what the landlord is seeking are items that are over 20 years old. The tenants stated it's unfair that the landlord wishes to renovate the unit at their expense. The tenants stated that the landlord is seeking to replace some items that were never agreed to or listed as part of the furnished suite. The tenant stated that no checklist or inventory of furniture and items was ever agreed to or signed off on.

The landlord is seeking \$1448.99 for various repairs in the unit, and replacement of items. The landlord provided a detailed list of repairs that involve plumbing, painting, carpet replacement, rubbish removal, dumping fees and miscellaneous repairs. The landlord gave testimony that many of the items were between 15-25 years old. The landlord provided a fully furnished unit to the tenants. The landlord has provided a list of items that they say were damaged or missing as a result of the tenants actions. The landlord did not provide a checklist of items that were included with the unit from the outset of the tenancy.

I have considered the criteria for a monetary order pursuant to section 67 of the Act, along with Policy Guideline 40 that addresses the "useful life" of building elements. The landlord has failed to provide sufficient evidence to show that the "damage" they allege was beyond general wear and tear and that the tenants were reckless or negligent. In addition, the landlord has not provided sufficient evidence to show that the "furnished items" had been damaged beyond general wear and tear and that the tenants stole the items as claimed.

There was no checklist at the start of the tenancy which reflected the included items as part of the tenancy. In any event, many items the landlord was seeking compensation for had exceeded its "useful life" and they would not be entitled to the cost of replacement as per Policy Guideline 40. Furthermore, the landlord presented their evidence in a convoluted and unclear manner. Each time I asked the landlord to clarify the landlord would provide a slightly different version of the damages or claims being made. I did not find the landlords testimony to be clear concise or compelling. Based on the above and on a balance of probabilities, I dismiss this portion of the landlords claim for repairs and replacement of items in the suite.

2. Cleaning \$481.00.

The tenants stated that they dispute this claim. The tenants stated that they hired someone to clean the carpets for them and that they left the unit cleaner than when they got it. The tenants have provided the receipt and photos of the unit at move out reflecting the clean condition of the unit. The tenant stated that the landlords' pictures were taken several weeks prior to move out and that the tenant had not yet begun cleaning. The tenant stated that the landlord at no time brought to the tenants' attention that the unit was dirty or damaged. The tenant stated that the landlords "invoices, receipts and what they are seeking doesn't add up". The tenant stated that the landlords' numbers are off and doesn't make sense.

The landlord stated that the unit was left dirty and unsuitable for rental. The landlord stated that the documents provided clearly support their claim.

As I have outlined at the beginning of this analysis, the applicant bears the responsibility to prove their claim. I agree with the tenant that the landlord presented a disjointed and unclear version of events that was difficult to follow. The landlords' calculation of costs incurred and documents are in direct contradiction to each other and ask more questions than it answers. Based on the insufficient and contradictory evidence before me, and on a balance of probabilities, I dismiss this portion of the landlords' applications.

It is worth noting that the landlord advised me at the end of the hearing that he had been recording the proceedings. The landlord wished to play portions of the first hearing date to argue his position. I advised the landlord that it was in contravention of the Rules of Procedure and that he was not entitled to do that.

For the benefit of both parties I have included the Rule 6.11 (previously Rule of Procedure 9.1)

6.11 Recording prohibited

Persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. Prohibited recording includes any audio, photographic, video or digital recording.

Conclusion

The landlords' application is dismissed in its entirety. The landlord is to return the security and pet deposit to the tenant. I grant the tenant an order under section 67 for the balance due of \$1025.00. This 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: December 10, 2015

Residential Tenancy Branch

