



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for breach of an agreement with the landlords, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord, MB ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had authority to represent "landlord GB," the other landlord named in this application, as an agent at this hearing. This hearing lasted approximately 91 minutes in order to allow both parties to fully present their submissions.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenant's written evidence package, including a USB drive. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' Application and the landlord was duly served with the tenant's evidence package.

At the outset of the hearing, both parties confirmed that the tenant had already vacated the rental unit. Accordingly, the landlords' Application for an order of possession is dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Both parties agreed that this tenancy began on October 1, 2014, the tenant left the unit on February 5, 2016 and the tenant removed her items, returned the keys and completed the move-out condition inspection on February 7, 2016. Monthly rent in the amount of \$1,200.00 plus 2/3 of all utilities were payable on the 1st and 15th days of each month from October 2014 until September 2015. Monthly rent was then increased to \$1,400.00 per month to account for \$200.00 in utilities per month and was payable on the first day of each month from September 2015 until February 2016. Two written tenancy agreements were provided for this hearing for the above two time periods. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant said she paid a \$200.00 pet damage deposit to the landlord, while the landlord denied this fact. The tenant said that she was not provided with a receipt for this payment. The tenant did not produce any bank records or other documentary proof to demonstrate that she paid the above amount.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. The landlord agreed that the tenant provided a written forwarding address on the move-out condition inspection report on February 7, 2016. The landlord did not have written permission from the tenant to keep any amount from her security deposit. The landlord filed his application on January 19, 2016 and then amended it on January 21, 2016.

The landlords seek \$340.00 for labour and \$258.71 to replace a dishwasher in the rental unit. The landlords provided invoices for the above amounts. The landlord testified that the tenant reported a broken dishwasher and he had a technician replace the dishwasher in the tenant's rental unit with a dishwasher from his own unit for \$240.00. The landlord said he then bought a new dishwasher for his own unit for \$258.71. He said that the replacement dishwasher given to the tenant then broke because the tenant used laundry soap instead of dishwasher soap. The landlord confirmed that he had to have a technician diagnose and repair the replacement dishwasher for approximately \$105.00. The tenant agreed that she owed \$105.00 to the

landlord because she used laundry instead of dishwasher soap. The landlord said that the tenant is responsible for the cost of both dishwashers because if she used laundry soap on the replacement dishwasher, she must have done the same with the first one. The landlord agreed that he did not have a technician diagnose the cause of the first broken dishwasher. The tenant said that she is not responsible for the first broken dishwasher because she did not cause it to break. She said that the seal for the door leak was broken and fungus was leaking into the back of the first dishwasher.

The landlords also seek \$580.15 total, not \$600.00 as noted in their Application, for unpaid utilities and rent from this tenancy. The landlords seek \$200.00 for unpaid rent in May 2015, stating that the tenant only paid \$1,000.00 not \$1,200.00 as required for rent. The landlords provided copies of e-transfer emails from the tenant, showing the rent and utilities paid as well as messages from the tenant regarding outstanding amounts owed by her to the landlords. The tenant said that she paid cash of \$200.00 to the landlord for May 2015 rent on September 27, 2015, prior to the new tenancy agreement taking effect. The landlords seek \$380.15 for unpaid utilities from December 2014 to August 2015. The landlord provided copies of utility bills and both parties agreed that the tenant owed a 2/3 portion from each bill for utilities. However, the tenant said that she paid \$248.00 for any outstanding utilities on September 27, 2015.

The landlords seek \$1,000.00 for labour and materials related to painting, flooring and cleanup after the tenant vacated the rental unit. The landlord said that he reduced the tenant's rent for two months, of \$600.00 each month, totaling \$1,200.00, for her to remove and replace the carpet in the rental unit. The landlord noted that the previous tenants destroyed the carpet so it needed replacing. The landlords provided rent receipts to show the above amounts paid by the tenant for rent. The tenant testified that she paid full rent of \$1,200.00 for both months and that the landlords' receipts were falsified because they were written in a different receipt book than the landlords' original receipts that were given to her. The landlord said that he ran out of receipts in his original receipt book so he had to buy a new one. The landlords also provided a text message to the tenant indicating this \$1,200.00 reduction in rent and the tenant acknowledged it and asked for the landlords to provide a reference for a future rental unit. Both parties agreed that the tenant removed all the carpet but never replaced it with any flooring, except for in the master bedroom. The tenant said that she was not paid to replace or remove the flooring and that she has filed her own separate claim for damages, which is to be heard on August 31, 2016, the file number of which appears on the front page of this decision. The landlord said that he spent a month buying materials and laying the flooring himself, such that he is claiming for an estimated amount for himself, not a professional, to lay the flooring. The landlord provided receipts for the purchase of flooring, as well as photographs of the flooring purchased and the master bedroom where partial flooring was laid by the tenant.

During the hearing, the landlord confirmed that he was not pursuing the landlords' claim for \$2,790.57, stating that the landlords had found the "stolen materials" that they were initially claiming. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

The landlords also seek to recover the \$50.00 filing fee paid for their Application.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$105.00 of the \$598.71 sought for fixing and replacing the two dishwashers. The tenant agreed to pay \$105.00 because she caused damage by using the wrong type of soap in the dishwasher. I dismiss the remaining \$493.71 because I find that the landlords failed to meet part 2 of the above test to show the cause of the first broken dishwasher. The landlords provided no documentary proof that the tenant used the wrong soap for the first dishwasher, only the replacement one. Further, the tenant disputed the landlord's claim and it is up to the landlord to prove that the tenant caused damage on a balance of probabilities.

I award the landlords \$200.00 in unpaid rent and \$380.15 in unpaid utilities. I find that the landlords provided documentary proof in the form of utility bills and e-transfer documents to show that the tenant did not pay the above amounts as required by her tenancy agreements. I find that the tenant did not provide documentary proof to dispute the landlords' claim that she paid the owed amounts on September 27, 2015. Both parties agreed that the new rent in effect as of September 1, 2015, was \$1,400.00 not \$1,200.00, to account for utilities. Both parties produced documents to show that the tenant began paying the \$1,400.00 owed in September 2015.

I award the landlords \$1,000.00 for replacing the flooring in the rental unit. I find that the landlord reduced the tenant's rent by \$1,200.00 for two months in order to replace the flooring. The landlord provided rent receipts to show that the tenant paid reduced rent for those two months. I find that the tenant was responsible for paying rent while occupying the unit during this time and she failed to pay it in exchange for replacing flooring. I find that the tenant failed to replace the flooring, by her own admission, except for the master bedroom. I find that the landlord has accounted for this partial flooring in the master bedroom, in the amount of \$200.00 and has therefore, only sought \$1,000.00 rather than \$1,200.00 for this exchange in rent and flooring.

As the landlords were mainly successful in this Application, I find that they are entitled to recover the \$100.00 filing fee.

I find that the tenant did not pay a pet damage deposit of \$200.00 as she failed to provide documentary evidence and the landlord denied this fact. I find that the landlord provided a rent receipt to show that the tenant only paid a security deposit of \$600.00 at the beginning of this tenancy.

The landlords continue to hold the tenant's security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlords to retain the tenant's security deposit of \$600.00 in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,185.15 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' Application for an order of possession and a monetary order of \$2,790.57 for "stolen materials" is dismissed without leave to reapply.

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 29, 2016

Residential Tenancy Branch

