



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF; MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, damage and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

This hearing also addressed the tenants' cross application for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant DF (the "tenant") and the landlord's agent (the "landlord") attended the hearing. The landlord confirmed he was an agent of the landlord named in this application, and had authority to speak on his behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or damage?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested? If not, are the tenants authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

As per the testimony of the parties the tenancy originally began on June 1, 2013 on a fixed term. As per the submitted tenancy agreement and testimony of the parties, the tenancy was renewed June 1, 2015 on fixed term until May 31, 2016. Rent in the amount of \$1,750.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$850.00 at the start of the tenancy. The tenants vacated the rental unit on April 15, 2016. The parties agreed that a written condition inspection report was not done at move-in or move-out.

Landlord Claims

The landlord seeks a total of \$7,835.52 in damages.

Window Repair

The landlord testified that the window broke three months into the tenancy and was never fixed by the tenant. The landlord paid \$420.00 in labour costs to take out the broken window and install a new window. The landlord provided a receipt and is seeking \$420.00 in labour costs.

The landlord is seeking the cost of the new window in the amount of \$543.02. The landlord provided a receipt for the new window. The landlord estimated that the cracked window was approximately 15 to 20 years old.

In total, the landlord seeks \$963.02 in reimbursement for the window replacement and repair.

Junk Removal

The landlord testified that the tenants left behind heavy recliner chairs, a weight lifting set, a bed, a sofa and other miscellaneous items that took five truck loads over three days to remove. The landlord paid cash in the amount of \$2,900.00 to a company he found on craigslist. The landlord provided an invoice.

Loss of Rental Revenue

The landlord testified that commencing April 20, 2016 he started advertising the rental unit on craigslist. The landlord re-rented the unit effective June 1, 2016 and is seeking April and May lost rent in the total amount of \$3,500.00.

Kitchen Repairs

The landlord estimated the kitchen cabinets were 16 to 20 years old; however the landlord seeks reimbursement for the cost to repair the cabinets. The landlord provided a receipt and seeks \$472.50 for kitchen repairs.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Tenants Claims

The tenants seek a total of \$1,070.00 in damages. The tenant testified that she conducted repairs to the rental unit upon commencing the tenancy and seeks to recover those costs now. The tenants have not provided receipts and seek to recover \$1,070.00. The tenants seek the return of their security deposit in the amount of \$850.00. The tenants are also seeking to recover the \$100.00 filing fee for this application from the landlord.

Window Repair

The tenant acknowledged the window broke approximately three months into the tenancy however the tenant contends this was a result of age. The window frame was decayed and the glass broken from the outside. The tenant testified that she reported the break to the landlord and was told it would be fixed at the end of their tenancy. The tenant did not repair the window but instead placed tape on the crack.

Junk Removal

The tenant contacted the owner of the junk removal company listed on the landlord's submitted invoice and was told that this company did not provide any junk removal service for the landlord. The tenant was also told by the owner of the junk removal company that such a job would likely only cost \$900.00. The tenants provided a witness statement from the owner of the junk removal company. The tenant testified that nothing was left behind; the rental unit was left empty. The tenants provided a witness statement from the individual they hired to clean the rental unit and remove junk from the unit.

Loss of Rental Revenue

The tenant testified that \$400.00 cash was paid for April rent and in response the landlord issued a receipt. The tenant did not submit the receipt. The tenant explained that they vacated prior to the expiry of the fixed term because the landlord without notice began building a new house in close proximity to the rental unit. It is the tenants' position that this building in effect cancelled the terms of the fixed term tenancy.

Kitchen Repairs

The tenant testified that the kitchen cabinets were not damaged. The tenant provided pictures of the kitchen.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Landlord's Claims

Window Repair

Under section 37 of the *Act*, a tenant must leave the rental unit undamaged except for reasonable wear and tear. The *Residential Tenancy Policy Guideline* ("*RT Policy Guideline*") establishes that tenants are not responsible for reasonable wear and tear of the rental unit. Reasonable wear and tear refers to the natural deterioration that occurs due to aging and other natural forces.

Based on the parties' testimony that the cracked window was between 15 to 20 years old, I find on the balance of probabilities that the crack occurred due to the natural deterioration of the frame and therefore do not award the landlord any compensation to replace the aging window.

Junk Removal

Under the *RT Policy Guideline*, tenants are responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary.

I prefer the testimony of the landlord over the tenant in relation to items left behind at the rental unit. The landlord was consistent in his testimony, and did not waiver in his version of what items were left behind, listing specific items more than once. The landlord agreed that he did not use the company contacted by the tenant. The landlord explained that he used a company from craigslist with the same company name the tenant contacted.

The tenant's evidence, on the other hand was less credible. The tenants witness statement indicates items left behind were disposed of, but remains undated and does not list the items removed or specify the cost of the removal. Further I question how the junk removal company the tenant contacted could give an estimate on removal if the tenant communicated to the company that no junk remained.

The landlord's testimony has persuaded me on the balance of probabilities that the tenants left items behind. Therefore I find that the landlord is entitled to \$2,900.00 in junk removal costs.

Loss of Rental Revenue

Pursuant to the *RT Policy Guideline, 30: Fixed Term Tenancies* ("*Guideline 30*"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. If the tenant alleges cause, the tenant must provide the landlord with proper notice under the *Act*.

The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenant alleged cause, and vacated the rental unit earlier than the date specified in the fixed term tenancy agreement. The tenant did not provide notice to the landlord as required under the *Act*. In the absence of proper notice or a mutual agreement to end tenancy I find the tenant did not end this tenancy in accordance with the *Act*.

Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Because the landlord attempted to mitigate his loss by advertising quickly following the tenants vacancy, and the tenants did not end the tenancy in accordance with the *Act*, I find the landlord is entitled to April and May lost rent in the amount of \$3,500.00.

Kitchen Repairs

In the absence of a move-in or move-out condition inspection report, I find the landlord has provided insufficient evidence to establish the kitchen cabinets were damaged by the tenants. For this reason I find the landlord is not entitled to compensation for kitchen repairs and dismiss this portion of the landlord's monetary claim.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application, for a total award of \$6,450.00.

Tenants Claims

The tenants have not provided receipts to support their claim of \$1,070.00 in damages and for this reason I dismiss this portion of the tenants' claim.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

During the hearing, the tenant acknowledged that they did not provide the landlord with their forwarding address. Accordingly I find the tenants' application for the return of the deposit premature and dismiss this portion of the tenants claim.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Set Off of Claims

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$850.00 in partial satisfaction of the \$6,450.00 monetary award and I grant an order for the balance due **\$5,600.00**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$5,600.00**.

I dismiss the landlord's claim for window and kitchen repairs without leave to reapply.

The tenants' entire application 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: September 7, 2016

Residential Tenancy Branch