



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, 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, for damage to the rental unit, 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 all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and landlord attended the hearing. 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.

Preliminary Issue – Security Deposit

The security deposit was the subject of an arbitration hearing held April 4, 2016. The Arbitrator in this hearing determined that the tenant was entitled to the return of the security deposit. On May 3, 2016, the landlord filed a review of this decision. The reviewing Arbitrator upheld the original decision and order. For this reason, I will not be making a finding on the return of the security deposit and dismiss this portion of the landlord's claim without leave to reapply. For ease of reference, the file number for this hearing is set out on the front page of this decision

Issue(s) to be Decided

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

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 1, 2014 on a fixed term until November 30, 2015. Rent in the amount of \$1,650.00 is payable each month. The tenant remitted a security deposit in the amount of \$825.00 at the start of the tenancy. The tenant vacated the rental unit July 6, 2015.

The parties agreed that a written condition inspection report was not completed at the start or end of the tenancy.

Landlord

The landlord seeks \$2,472.33 in damages.

Rental Loss

The landlord testified that the tenant did not pay July rent and is therefore seeking \$1,650.00 to compensate for this loss of income. The landlord provided a copy of a Notice to End Tenancy for Unpaid Rent dated July 5, 2015.

Utility Bill

The landlord testified that the tenant left an unpaid utility balance in the amount of \$188.39 and seeks to recover this. The landlord provided a copy of the utility receipt.

Garburator Repair

It is the landlord's position that the tenant damaged the garburator and did not notify the landlord upon vacating the rental unit. The landlord had the garburator replaced at the cost of \$322.36 and seeks to recover this amount from the tenant. The landlord provided a copy of the plumbing receipt.

Closet Door

The landlord seeks \$295.08 in supplies he purchased from the hardware store to repair a closet door. The landlord did not provide a receipt.

Other repair purchases

The landlord submits that he purchased miscellaneous items to repair drywall damage left by the tenant's television bracket. The landlord seeks \$16.50 and has submitted two receipts.

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

Tenant

Rental Loss

The tenant testified that because he did not book the elevator in time, he could not vacate the rental unit at the end of June and instead vacated July 6, 2015. The tenant explained that the landlord agreed to waive July's rent.

Utility Bill

The tenant acknowledged he did not pay the outstanding utility bill and is prepared to pay this balance to the landlord.

Garburator Repair

The tenant testified that there was nothing wrong with the garburator during his tenancy or upon vacating the rental unit.

Closet Door

The tenant did not recall an issue with a closet door.

Other repair purchases

The tenant acknowledged his television bracket left damage to the wall.

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.

Rental Loss

I find the tenant provided insufficient evidence to establish the landlord agreed to waive July rent. Further, the notice served by the landlord on July 5, 2015 is more congruent with the landlord's position that he sought unpaid rent. For this reason I find the landlord is entitled to recover July rent in the amount of \$1,650.00 from the tenant.

Utility Bill

Based on the tenant's acknowledgement that he did not pay the outstanding utility bill, I award the landlord \$188.39.

Garburator 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 a tenant is generally required to pay for repairs where the tenant or the tenant's guest causes damages either deliberately or as a result of neglect.

I find in the absence of a written move-in inspection report, the landlord has provided insufficient evidence to establish that the tenant damaged the garburator. For this reason I dismiss this portion of the landlord's claim without leave to reply.

Closet Door

The landlord provided insufficient evidence to establish the closet door damage was a result of this tenancy and the landlord failed to verify this loss with receipts. Accordingly this portion of the landlord's claim is dismissed without leave to reapply.

Other repair purchases

The tenant does not deny his television bracket caused some damage; therefore I award the landlord \$16.50.

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 for a **total award of \$1,904.89**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,904.89**.

The landlord's application for a monetary order in relation to the garburator and closet door repair is dismissed without leave to reapply.

The landlord's application to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested 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 8, 2016

Residential Tenancy Branch