



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, MND, FF

Introduction

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 and an order to recover the filing fee. 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.

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 March 1, 2014 but the tenants moved in early on February 23, 2014 and the tenancy ended on December 31, 2015. The tenants were obligated to pay \$1537.50 per month in rent in advance and at the outset of the tenancy the tenants paid a \$750.00 security deposit.

At the outset of the hearing the tenants advised that the cost to replace the bathroom faucet, the utilities costs and the cost to replace the key are not in dispute and agree to pay those amounts. The landlords claim for photocopying and pictures to prepare for this hearing was also discussed. The landlord stated that at the time he applied for dispute resolution he wasn't aware that the Act does not allow an Arbitrator to award these costs but has since become aware that an Arbitrator cannot and is no longer pursuing that portion of his application.

The landlord stated that the tenants left the unit dirty and caused damage to the walls and floors at move out requiring him to hire a handyman to clean the unit and patch, sand and paint walls, clean walls and windows and to remove the strong cat odor in the suite. The landlord also seeks the cost of "snaking" the bathtub drain in July of 2015. The landlord stated that the plumber found plant debris such as soil, leaves and flowers when he cleaned the drain out. The landlord stated that this is reckless behaviour from the tenants and they should be responsible for this cost.

The landlord is also seeking the cost for having a plumber come and do a full and detailed inspection unnecessarily as a result of the tenants' actions. The landlord stated that the tenants unit has a claw foot bathtub that requires a shower curtain all the way around it to prevent water from splashing onto the floor. The landlord stated that the tenants splashed around in the tub on the first night and spilt so much water on the floor it damaged the ceiling of the tenant below resulting in more work and expense for the landlord.

The landlord stated that this occurred on two subsequent occasions. The landlord stated that he made inquiries with the subject tenants but they denied any responsibility. The landlord stated the tenants accused him of not maintaining the property so he hired a professional plumbing company to inspect the tub. The plumbers report found no deficiencies with the bathtub or the plumbing system of the tub or toilet in the subject unit. The landlord stated that this clearly shows that the tenants were reckless and spilt water onto the floor causing damage to the suite below on three separate occasions.

The landlord is applying for the following:

1.	Handyman repairs and cleaning	\$485.00
2.	Unplug the bathtub drain 2015	\$78.75
3.	Milani Plumbing	\$759.50
4.	Filing Fee	\$100.00
5.	Utilities, Key, & Bathroom faucet (not in dispute)	\$452.62
	Total	\$1875.87

The tenants gave the following testimony. The tenants stated that they dispute damaging the walls at move out. The tenants stated that there were some minor scuffs but nothing beyond normal wear and tear. The tenants stated that they question the clarity of the invoice of the handyman as the details are general and does not provide a precise breakdown. The tenants stated that they filled and patched the small holes that they made and were waiting for the landlord to provide them the exact paint to match and they would have conducted the work, however the landlord did not provide them with the paint.

The tenants stated that they adamantly dispute that they dumped any plant debris in the tub causing it to get plugged. The tenants stated that the tub had ongoing issues during their tenancy and that was the cause of the damage to the suite below. The tenants stated that they had several shower curtains hung up to avoid overflowing water onto the floor.

Analysis

While I have turned my mind to all 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 landlord's claim and my findings around each are set out below.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of 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 other party 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 applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

1. Handyman Repairs and Cleaning \$485.00.

The invoice lacks a precise and specific breakdown of hours worked, cost per hour, breakdown of time for each repair and what if any materials were used. In addition, the landlord stated that the handyman repaired the floor and replaced the faucet and was part of this invoice, yet nowhere on the invoice does it reflect these repairs or costs to conduct those repairs. Furthermore, the landlord has failed to satisfy me that the holes in the walls were excessive or willful damage. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

2. Unplug the tub - \$78.75 – July 2015

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant. The landlord did not provide sufficient evidence to support his claim that the tenants dumped plant debris down the drain. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

3. Milani Plumbing - \$759.50

The landlord provided a detailed invoice from a large reputable plumbing company. The landlord stated that water overflowed from the subject unit on three separate occasions and damaged the ceiling of the unit below. The landlord stated that this only happened during this tenancy and never before and never since. The tenants have not provided sufficient disputing evidence to discredit the plumbers report. The facts leave little room for any conclusion other than that the tenants caused the water to overflow on the three occasions, thus causing the landlord to conduct an unnecessary and costly plumbing inspection. Based on the above, the landlords documentation and on a balance of probabilities I find that the landlord is entitled to \$759.50.

4. Utilities, Key, & Faucet replacement \$452.62.

The tenants accept responsibility for these costs and I therefore find that the landlord is entitled to \$452.62.

The landlord is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$1312.12. I order that the landlord retain the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$562.12. This order may be filed in the Small Claims 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: September 06, 2016

Residential Tenancy Branch