



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4898 for damages
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the tenants by mailing, by registered mail to where the Tenants reside on May 31, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2014, end on March 31, 2015 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1650 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$825 and a pet damage deposit of \$412.50 prior to moving into the rental unit. The tenancy ended on July 15, 2015.

The landlord failed to return the security deposit and pet damage deposit. On February 23, 2016 the tenants obtained a monetary award of \$2112.50 for double the security deposit, the

return of the pet damage deposit and the filing fee. The landlord has paid this sum to the Tenants.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss

I have carefully considered all the evidence before me. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the landlord must satisfy each component of the test below:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage

- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$326.47 for parts and \$220.50 for labour for replacing a stove top. The tenant denies causing damage to the stove top. Little weight can be given to the Condition Inspection report as the landlord made changes after the tenant vacated. It is difficult to determine from the photos the damage the landlord was claiming. The landlord failed to prove the tenant caused this damage.
- b. I determined the landlord is entitled to \$236.25 for the cost of repairing chips in the bathtub. I am satisfied the tenants caused this damage. The work has been completed and the landlord paid this sum.
- c. I determined the landlord is entitled to \$115.50 for the cost of repairing a crack to the countertop. I am satisfied the tenants caused this damage. The work has been completed the landlord paid this sum to the repair person.
- d. The landlord claimed the sum of \$2134.76 for damage to the floor. The rental unit is 13 years old. The landlord testified the floor was 5 years old. The work has not been completed and a new tenant is living in the rental unit. The pre-tenancy condition inspection report indicates there was some damage to the floor prior to the tenants taking possession. However, the photographs indicate significantly more damage. I determined the landlord is entitled to \$200 of this claim but the additional deterioration to the floor.
- e. I dismissed the claim of \$180 for the cost of cleaning as the landlord failed to prove he incurred this expense.
- f. I dismissed the claim of \$462.63 to replace a freezer door and \$262.50 to replace a fridge door. The doors have not been replaced. The fridge and freezer were 13 years old and were original with the construction of the rental unit. The landlord failed to prove the tenants caused the damage and failed to prove quantum of loss as the landlord failed to prove he has an intention to replace the doors.
- g. The landlord claimed the sum of \$859 for the cost of painting. I accept the landlord's evidence that the rental unit was repainted. I determined the landlord is entitled to \$200 of this claim after factoring in reasonable wear and tear and depreciation. The rental unit was partially painted (3 walls and touch up) when the tenants moved in.
- h. I dismissed the claim of \$100 for the cost of a move out fee. The tenancy agreement prepared by the landlord is ambiguous. It states that the tenant is to pay \$100 for a move in/out fee. The tenant provided the landlord with \$100 when he moved in. The landlord failed to prove that the term meant to say that the tenant owed \$100 for a move in fee and \$100 for a move out fee.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$751.75 plus the \$100 filing fee for a total of \$851.75.

Conclusion

In summary I determined the landlord has established a monetary order against the I ordered that the Tenant pay to the Landlord the sum of \$851.75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the 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: November 28, 2016

Residential Tenancy Branch