



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent; for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation, or tenancy agreement; and to recover the filing fee.

The Landlord, the Landlord’s translator, one of the Tenants, and the Tenant’s agent appeared for the hearing. All testimony was taken under affirmation. The Tenant confirmed receipt of the Landlord’s Application and the Landlord’s documentary and photographic evidence. The Landlord confirmed receipt of the Tenants’ documentary and photographic evidence. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damages to the unit?
- Is the Landlord entitled to unpaid rent for August 2016?
- Is the Landlord entitled to the legal fees claimed?

Background and Evidence

Both parties agreed that this tenancy started on March 3, 2013 and ended on August 31, 2015. A written tenancy agreement was completed but was not provided into evidence for this hearing. The monthly rent was \$1,650.00 payable on the first day of each month. The parties confirmed that the Landlord did not complete a move-in Condition Inspection Report (“CIR”) or a move-out CIR in this tenancy; neither did any party provide a copy of a CIR into evidence.

The Landlord testified that the Tenants did not pay the last month's rent for their tenancy, namely on August 1, 2015. The Tenant's agent explained that the Tenants had withheld August 2015 rent because they had been served with a 2 month notice to end tenancy. The Landlord confirmed that she had served the Tenants with a 2 month notice to end tenancy on the approved form but did not read the second page of the 2 page notice. The Landlord acknowledged during the hearing that the Tenants were entitled to one month's compensation and that under the Act the Tenants can obtain this relief by withholding their last month's rent.

The Landlord testified that the Tenants had burnt the countertop in the kitchen. The Landlord provided one photograph to evidence this damage. The Landlord provided an invoice which detailed the cost to replace the 8 feet of laminate counter which comprised of: 25.00 per square feet for material; \$500.00 to install the counter; \$200.00 to replace the sink and plumbing items; and \$100.00 to dispose of the old countertop.

The Tenant disputed the costs stating that they did burn the laminate countertop but there were two countertops in the kitchen and it was the smaller 2 feet one that was damaged and not the longer one. The Tenants provided photographic evidence to show that the damaged area was not on the longer countertop in the kitchen area that housed the sink, but on the smaller countertop. Therefore, the Tenants should not be responsible for the amount being claimed by the Landlord for the longer countertop.

The Landlord testified that the Tenants stained the living room carpet with bleach. The Landlord provided two photographs showing staining to the carpet. The Landlord provided an invoice of \$2,250.00 for the replacement of the carpet.

The Tenant testified that they did not steam clean or shampoo the carpets at the end of the tenancy because the Landlord had informed them that she was going to be doing major renovations to the rental unit and replacing the carpet. The Tenants did not obtain anything in writing from the Landlord to this effect. The Tenant testified that the stains on the carpet were general wear and the stains were from tea and not bleach.

The Landlord claims \$170.00 for the repair to the closet door and \$280.00 for a broken window frame which she alleged that the Tenants had broken during the tenancy. The Landlord provided two photographs each for these damages as well as an invoice. The Tenant denied the damage to the closet door stating that this damage existed at the start of the tenancy. The Tenant referred to a witness letter from the Landlord's ex-husband which verified that the Tenant had reported the loose closet door to the Landlord after the tenancy started. The Tenant explained that if the Landlord had completed the move-in CIR this would have documented this damage. The Tenant

denied that they caused any damage to the window stating that the Landlord's photographic evidence was taken after they moved out and she had started doing renovations which is what her photographs show.

The Landlord claims \$315.00 for alleged damage caused by Tenants of a plumbing fixture during the tenancy. The Landlord relies on one photograph showing a plumbing handle which she explained the Tenants had damaged. The Landlord testified that she had discovered this damage during the tenancy but the Tenants had failed to let her into the rental unit to fix it. The Tenant denied the Landlord's claim and testified that during the tenancy there was a plumbing issue which was attended to by the Landlord's ex-husband who provided a written statement of this. The Tenant submitted that there were on-going plumbing issues in this rental unit which the Landlord had failed to attend to and was now seeking to claim them back from the Tenants.

The Landlord denied this evidence stating that the all the plumbing issues were fixed in 2015 and the damage being claimed from the Tenants were caused by them. The Landlord testified that her ex-husband's statement is not to be believed as they are going through a marital dispute and that evidence is biased.

The Landlord claims \$100.00 from the Tenants for failing to clean the rental unit. The Landlord did not provide an invoice for this cost but explained that this has been factored into the cost of the flooring on that invoice. The Tenant testified at first that they did not clean the rental unit because the Landlord had given them permission not to do so. However, later on in the hearing, the Tenant stated that this testimony was in relation to the cleaning of the carpet and not in relation to the cleaning of the rental unit. The Tenant pointed me to photographs they had provided into evidence to show the rental unit was clean at the end of the tenancy.

The Landlord argued that the Tenants had not cleaned the rental unit and that the Tenant had changed his testimony during the hearing. However, despite the Landlord being pointed to the Tenants' photographs which clearly showed the rental unit was cleaned, the Landlord continued to assert that it was not.

The Landlord claims for interest and legal fees from the Tenants because the Tenants had approached the Landlord's ex-husband as a witness for this hearing who then provided a signed witness statement. The Landlord explained that she was having a marital legal dispute with her ex-husband and because the Tenants had involved her ex-husband in this dispute she had to seek legal advice in relation to how this may impact her marital dispute. The Tenant's agent denied this portion of the Landlord's monetary claim.

Analysis

A party that makes an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the Application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail. I have carefully considered the evidence before me on a balance of probabilities and I find as follows.

Sections 51(1) and 51(1.1) states that a tenant who receives a 2 month notice to end tenancy is entitled to withhold their last month's rent to obtain the compensation payable by the landlord. The Tenant confirmed that they had withheld their rent for August 1, 2016 pursuant to the 2 month notice which the Landlord confirmed had been served to the Tenants. Therefore, as the Tenants had authority under the Act to withhold rent for August 2016, this portion of the Landlord's monetary claim is dismissed.

I also dismiss the Landlord's monetary claim for legal and interest fees from the Tenants. Any party is at liberty to approach another party to provide evidence for dispute resolution proceedings. I find this is not a breach of the Act. The Tenants should not be held liable or responsible for costs associated with a dispute the Landlord is having outside of the confines of this tenancy.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of the tenancy. The Act also states that the landlord must complete a CIR at the start and end of the tenancy. Section 21 of the *Residential*

Tenancy Regulation provides that a CIR can be used as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary. In assessing the Landlord's claim for damages to the rental unit, I find the failure of the Landlord to complete the CIR requires the Landlord to prove, using other evidence, that the Tenants caused alleged damages, which would have otherwise been proved by the CIR.

In relation to the countertop damage, the Tenant admitted to causing the burn mark damage. However, I find the Tenant provided sufficient evidence, as supported by their photographs, to show that the burn mark was caused to the smaller countertop rather than the larger one. Therefore, I find the Landlord is entitled to the replacement and installation costs of the countertop in the following amounts as I have determined. The Landlord's quote stated that the cost of laminate was \$25.00 per square feet. Therefore, as the Tenant's evidence is that the damaged countertop was two feet in length, I award the Landlord \$50.00 for the countertop material. The cost of the installation of the 8 foot countertop according to the Landlord's invoice was \$500.00. Therefore, the installation cost for one foot equals \$62.50 ($\$500.00 / 8 \text{ feet}$). Therefore, the amount awarded to the Landlord for installation is \$125.00 ($\62.50×2). The Landlord's invoice discloses an amount of \$100.00 for the disposal of the countertop which I award to the Landlord as this cost would not have varied with the size of the countertop. The Landlord's claim for the cost to redo the sink and plumbing items in the countertop area is dismissed as the damaged section did not show a sink. Therefore, the total amount awarded to the Landlord for countertop replacement is **\$275.00**.

With respect to the Landlord's claim for replacement of the carpet, I find that the Landlord provided insufficient evidence to show that the carpets needed to be replaced. The Landlord's photographic evidence is not sufficient to show that the stains were caused by bleach which was disputed by the Tenant, and I find the photographs provided by the Landlord are also consistent and plausible that they were tea stains. The Landlord's estimates provided into evidence for the replacement of the carpet do not disclose sufficient evidence that suggests the carpet actually required replacement. I find that the Landlord has failed to provide sufficient evidence that the carpets were (a) stained by bleach, and (b) that the stains could not be removed by a professional carpet cleaning company to the extent that they were required to be replaced. Policy guideline 1 on the responsibilities of tenants and landlords states that generally the tenant is held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. As the Landlord failed to provide sufficient evidence to show that the carpets in the rental unit had to be replaced, I deny her claim for the replacement cost of the carpet. In the alternative, as the Tenant disclosed that they had not cleaned the carpets at the end of the tenancy and this was an infraction of an obligation the Tenants had, I award the

Landlord **\$250.00** as a nominal award. I find this is an appropriate amount that reflects the cost of professional carpet cleaning.

In relation to the costs claimed by the Landlord for the repair to the closet door, the repair to the window frame, and the plumbing issues I make the following findings. I find that the only evidence the Landlord relies on is a single photograph showing a damaged pipe and two photographs each showing the damage to the window and closet door. In relation to these damages, I find the Tenant has provided a preponderance of evidence to show that the damage to the window may have been caused as a result of renovations which the Landlord completed after the tenancy ended. Furthermore, the Tenant has provided evidence to show that the issue of the closet door was apparent at the start of the tenancy and that there was an issue with the plumbing during the tenancy. Therefore, I am only able to conclude that in the absence of other conclusive evidence from the Landlord, such as the CIR, the Landlord's evidence is no more compelling than the Tenants' evidence. Therefore, the Landlord has failed to meet the burden of proof for me to award these costs which are hereby dismissed.

In relation to the cleaning of the rental unit, the Tenant testified that they had cleaned the rental unit at the end of the tenancy and therefore the Landlord should not be entitled to the cleaning cost of \$100.00 claimed from them. The Landlord argued that the Tenant had changed his testimony because he first testified that he had not cleaned the rental unit and then he stated that he did. The Tenant clarified during the hearing that his testimony with respect to not cleaning was in relation to the carpets and not the rental unit. During the hearing, the Tenant referred to his photographs which clearly show that the rental unit was cleaned. However, despite the Landlord acknowledging that she had seen these photographs she continued to argue that the Tenants had not cleaned it. The Landlord stated that the Tenant had not provided photographs of the entire rental unit and if he had, they would have shown that it was not clean.

In making my finding on this matter, I turn to the Tenants' photographic evidence. I find that the Tenants provided 14 photographs of different areas of the rental unit, including inside the fridge, none of which show the rental unit was dirty. The Landlord provided no photographic evidence of alleged lack of cleaning which would have been essential as the Landlord bears the burden of proof. I find the Tenant's photographs show that on the balance of probabilities the rental unit was left clean. Therefore, despite the Landlord's submission that the Tenant's testimony changed, I accept that the Tenant's testimony was in reference to the carpet cleaning and not the rental unit because the Tenants' photographic evidence is conclusive proof that satisfies me on the balance of probabilities that the Tenants cleaned the rental unit.

Furthermore, the Landlord failed to provide an invoice for the \$100.00 cleaning costs she incurred. The Landlord explained during the hearing that this amount was worked into the replacement of the carpet costs. However, I find that the invoice the Landlord relies on does not show the \$100.00 cleaning costs. I find it confusing and odd why the costs for cleaning the rental unit would be incorporated into a claim for replacement of the carpet as these amounts are unrelated and the Landlord's remaining invoice differentiates between the different types of damages being claimed. Based on the foregoing, the Landlord's claim for \$100.00 in cleaning costs is dismissed.

As the Tenants did cause some damage to the rental unit and the Landlord had to file this Application to claim costs from them, I find the Landlord is entitled to the **\$100.00** filing fee pursuant to Section 72(1) of the Act. Therefore the total amount awarded to the Landlord is **\$625.00**.

The Landlord is issued with a Monetary Order for this amount which must be served on the Tenants and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court. The Tenants may also be liable for the cost of enforcement if payment is not made. Copies of the order are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord's monetary claim is granted in the amount of \$625.00. The remainder of the Landlord's monetary claim is dismissed without leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 29, 2016

Residential Tenancy Branch