



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein he sought a Monetary Order for damage to the rental unit, unpaid rent, money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or the tenancy agreement as well as to recover the filing fee.

The hearing occurred by teleconference over two days, October 18, 2016 and December 8, 2016. Both parties called into the hearing on both days. The Tenant appeared on his own behalf and had his former girlfriend, T.M., available to testify. All present were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent and damage to the rental unit?
2. Should the Landlord recover the filing fee?

Background Evidence

The Landlord testified that this tenancy began July 1, 2014. Monthly rent was payable in the amount of \$1,400.00, which was paid every two weeks to coincide with the Tenant's pay. The Tenant paid a security deposit in the amount of \$700.00. The agreement further provided that the Tenant was to pay one half of the cable and internet. The Landlord testified that he resided in the basement suite and rented the upper suite.

Filed in evidence was a copy of the Monetary Orders Worksheet wherein the Landlord indicated he sought compensation for the following:

Floor repairs (estimate to replace flooring)	\$1,328.11
Tenant's share of the cable and internet	pending
Unpaid rent for July 2014	\$700.00
Waste removal	\$22.00
Filing fee	\$50.00
Waste removal	\$23.25
Waste removal	\$18.50
TOTAL	\$2,141.86

The Landlord testified that he also did not receive the rent payment for July 15, 2014 or August 1, 2014.

The Landlord confirmed that the tenancy ended on August 10, 2014. He also stated that he received a hand written letter from the Tenant indicating that his former girlfriend, T.M. had vacated the rental unit on July 29, 2014. Notably, he did not claim rent for August 2014.

The Landlord testified that the dining room carpeting and underlay was removed by the Tenant and replaced by a peel and stick flooring. He confirmed that the amount he claimed was an estimate he received from a flooring company for the cost to replace the peel and stick flooring with carpet and underlay.

The Landlord stated that the home was built in 1991 and that he owned the rental home for four years. He could not say whether the carpet was original, or had been replaced since the home was built.

The Landlord sought compensation for the cost to remove garbage from the rental unit, including the carpet and underlay which he testified was thrown into the backyard, the Tenant's mattress and barbeque as well as other "random items", which the Landlord disposed of and paid a dump fee.

The Landlord further confirmed that he did not have a forwarding address for the Tenants or a means to communicate with them, however, by "pure luck", the Landlord saw the Tenant go into a residence which turned out to be the Tenant's residential address.

In response to the Landlord's submissions the Tenant testified as follows. He stated that he did not move in July 1, 2014, as the residence was not livable, and he needed to stay in a "trailer" while the rental unit was cleaned. He further stated that the previous Tenants had four pit bulls and they were the ones that caused damage to the rental property prior to his tenancy beginning.

The Tenant stated that they did not deal with the Landlord at the time they moved in as the Landlord was away on holidays and instead dealt with the Landlord's parents as his agent. The Tenant stated that on the third or fourth day they were in the rental property they discussed the condition of the carpet with the Landlord's parents and the Landlord's parents agreed it could be removed.

The Tenant confirmed that he left the mattress and barbeque but claimed "everything else was left by the previous tenants". He further stated that these previous tenants were mad at the Landlord and it was clear by the way they left the rental unit. He stated that it was simply "not the same place they had looked at the previous month" when they agreed to rent the unit.

The Tenant further confirmed that he paid the damage deposit, but did not pay the rent as the Landlord's parents agreed that the money they were to pay for rent was to be put into the cost of replacing the flooring. He stated that the flooring cost approximately \$600.00 and he stated it was "good vinyl" and that they were also to be compensated for their time such that rent was not to be paid for July.

The Tenant stated that the carpet was the original carpet from 1991, and that it was unlikely that it was replaced based on its condition.

The Tenant stated that the day T.M. moved out, he spoke with the Landlord about their respective claims; specifically, the Landlord's claim for rent, and the Tenant's claim for compensation for the condition of the rental, the cost of the flooring and their labour.

The Tenant stated that he and the Landlord shook their hands and agreed they would drop their claims and the Tenants could remain in the rental unit for the month of August 2014 as compensation for the issues they faced in July due to its condition.

The Tenant stated that he agreed that the security deposit of \$700.00 and the cost of the flooring (\$600.00) and their labour was to be offset against any amount owing for rent.

T.M. also testified. She confirmed that she signed the residential tenancy agreement. She also confirmed that she and G.A. viewed the property a month prior to signing the agreement. She stated that in the meantime the previous tenants had several dogs in the rental unit and they appeared to allow the dogs to run rampant during the final month of their tenancy. She further stated that from the time they viewed it until they moved in it was markedly different.

T.M. stated that the Landlord was away when they moved in. She further stated that his parents gave them keys to the property and that his parents apologized for the condition of the rental unit. She confirmed that the Landlord's parents did not do a move in condition inspection report.

T.M. stated that the carpet in the room off the kitchen was so damaged, by pet urine that it needed to be removed. T.M. further stated that the urine was soaked through the carpet underlay and into the floor boards. T.M. stated that she spoke to the Landlord's parents and told them that the rental unit was not habitable because of the carpet and the Landlord's parents gave her permission to remove the carpet and underlay and to take the cost from the rent.

T.M. further stated that she borrowed a travel trailer from a friend to reside in while the rental unit was cleaned. T.M. stated that they resided in the travel trailer for nearly a month, and that in fact she was only in the rental unit for a very short time. She stated that she moved out July 29, 2014.

In reply the Landlord stated that the cost of the flooring paid for by the Tenants was just under \$400.00.

The Landlord confirmed that T.M. had filed a claim against the Landlord but neither party had called in so it was dismissed. The Landlord further stated that he did have a claim against the Tenants as well, which was also dismissed.

A review of the Branch records confirms that both parties had previous applications which were dismissed with leave to reapply (the file numbers are noted on the cover page of this my Decision). The Tenants' application was dismissed as neither party attended the hearing. The Landlord's Application was for an Order by Direct Request Proceeding and was dismissed as the amount of rent and due date was unclear.

Analysis

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence, as well as that of his former girlfriend, T.M., that the Landlord was not present at the start of the tenancy and that they dealt with the Landlord's parents at that time. I further accept their evidence that neither the Landlord, nor his agents, performed a move in condition inspection report as required by the *Residential Tenancy Act* and the *Regulation*.

As the Landlord's parents did not call into the hearing to testify on the Landlord's behalf, or otherwise provide evidence, and the Landlord was not present at the start of the tenancy, the best evidence I have as to the condition of the rental at the time, as well as discussions the Tenants had with the Landlord's parents, is that which I received from the Tenant and T.M.

I accept the Tenant's evidence that they viewed the rental approximately one month prior to moving in, and agreed to rent the rental unit as it was at that time. As well, I accept their evidence that the previous renters had allowed their dogs to damage the rental to such an extent that the rental unit was not habitable at the time the tenancy began. They both testified that the Landlord's parents apologized for the condition of the rental unit. Further, both the Tenant and T.M. testified that they lived in a travel trailer for the better part of the month of July 2014 while the rental unit was cleaned and the flooring removed. The Landlord did not dispute their testimony in this regard. Accordingly, while the tenancy was to begin July 1, 2014, the Tenants did not have the ability to reside in the rental unit at that time due to its condition.

I find that the Landlord's parents agreed the Tenants could remove the damaged carpeting and deduct the cost from the July 2014 rent. The parties did not agree as to the cost of the flooring installed by the Tenants.

I also find that the Tenants agreed that their security deposit could be retained by the Landlord towards any rent owing.

In all the circumstances, I find the Landlord is not entitled to compensation for rent for the month of July 2014.

I further find that the Landlord's parents acting as his agent gave the Tenant express permission to replace the damaged carpet in the dining room. Accordingly, I dismiss the Landlord's claim for compensation for the cost of repairing the flooring.

The Tenants concede that they left a mattress and barbeque but claim the balance of the garbage removed by the Landlord was property belonging to the previous renters. As the Landlord was not present at the time the tenancy began, the best evidence I have is the testimony of the Tenants in this regard. Accordingly, I am unable to determine what amount of the \$113.75 relates to the mattress and barbeque, and what amount relates to the previous renter's garbage. As the Landlord bears the burden of proving his claim, I find the claim must be dismissed.

The Landlord failed to provide invoices or other details regarding the "Tenant's share of the cable and internet". Accordingly, I dismiss his claim for compensation in this regard.

Having been unsuccessful, I dismiss the Landlord's claim for recovery of the filing fee.

Conclusion

The Landlord's claim is dismissed.

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: January 6, 2017

Residential Tenancy Branch