



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; a monetary order for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenant applied for a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant did not provide the full particulars of her monetary claim. There was no monetary worksheet to explain the breakdown of her claim. The Landlord testified that she did not understand the Tenant's monetary claim.

Section 59 of the Act requires an Applicant to provide the full particulars of the dispute that is to be subject to the dispute resolution proceedings. This section gives the

director authority to refuse to accept an application for dispute resolution if the application does not comply with the requirement for full particulars.

The Residential Tenancy Branch Rules of Procedure 2.5 also requires that an applicant must submit a detailed calculation of any monetary claims being made.

The Tenant's Application cannot be heard because there was no detailed calculation of the monetary claim and the Landlord did not fully understand the claim. The Tenant's Application for Dispute Resolution is dismissed with leave to reapply.

There was also a service of evidence issue where the Landlord testified that she could not pick up the registered mail sent by the Tenant because of a licence renewal, as she did not have picture identification at that time.

The Hearing proceeded and only the Landlord's Application was heard.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to compensation due to damage to the rental unit?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on May 1, 2016 as a 1 year fixed term tenancy. Rent in the amount of \$1,400.00 was due on the first day of each month. The Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$200.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement.

The Tenant testified that she moved out of the rental unit on July 3, 2016.

Landlord's Application

The Landlord's Application indicates the Landlord is claiming \$1,656.00 for cleaning costs and damage to the rental unit. The Landlord is requesting a monetary order for the following items, and is asking to retain the security deposit and pet damage deposit in partial satisfaction of his claim.

Carpet Cleaning	\$126.00
Glass Door damage	\$100.00

Cleaning Costs	\$30.00
July 2016 Rent	\$1,400.00

Carpet Cleaning

The Landlord is seeking \$126.00 for the cost of cleaning the carpets. The Landlord testified that the Tenant has a pet and the carpets needed to be cleaned.

In response to the Landlord's claim and testimony the Tenant testified that she agrees to the Landlord's claim for \$126.00

Glass Door Repair

The Landlord is requesting \$100.00 for the cost of repairing the glass on the back door at the rental unit. The Landlord testified that the damage was not noticed at the time of the move out inspection and is not noted on the Condition Inspection Report. The Landlord testified that it cost her \$70.00 to repair. The Landlord provided black and white photocopied pictures of the back door and broken tabs that secure the window. The photographs are of poor quality.

In response to the Landlord's testimony the Tenants testified that she never damaged the glass door and she never used the window in the door. The Tenant testified that the damage is not recorded in the Condition Inspection Report.

Cleaning Costs

The Landlord is claiming compensation in the amount of \$30.00 for having to wash walls, paint the ceiling, and clean the kitchen.

In response to the Landlord's testimony, the Tenant agreed to pay the Landlord \$30.00.

July 2016, Rent

The Landlord testified that the Tenant did not pay the rent for July 2016. The Landlord testified that the Tenant moved out in the beginning of July 2016. The Landlord testified that she did not rent the unit out to a new Tenant for any part of July 2016. The Landlord is claiming \$1,400.00 for loss of rent for the month of July 2016.

On May 4, 2016, the Landlord wrote a letter to the Tenant authorizing the Tenant to break the fixed term tenancy with 60 days notice.

In response to the Landlord's offer, the Tenant accepted the offer to end the tenancy, and sent the Landlord a letter dated May 31, 2016, giving the Landlord 60 days Notice to end the tenancy.

The Tenant testified that her rights to quiet enjoyment under section 28 of the Act were violated. She testified that she was constantly harassed by the Landlord and that she received 19 letters from the Landlord in the first two months.

The Tenant sent a letter to the Landlord dated June 9, 2016, which sets out the Tenants rights to privacy and freedom from unreasonable disturbance under section 28 of the Act, and asking the Landlord to comply.

Security Deposit

Section 38 of the Act requires that a Landlord must repay any security deposit to the Tenant or make Application for Dispute Resolution within 15 days of the end of the tenancy, or the date the Landlord receives the Tenant's forwarding address.

On July 14, 2016, the Landlord applied for Dispute Resolution requesting to keep the security deposit in satisfaction of her claim.

The Tenant testified that she provided the Landlord with her forwarding address on July 5, 2016.

The Tenant testified that she participated in a move in and move out inspection with the Landlord and received a copy of the Condition Inspection Report.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Carpet Cleaning

The Tenant agreed to pay for the carpet cleaning. I award the Landlord the cost of the carpet cleaning in the amount of \$126.00.

Glass Door Repair

In dispute resolution proceedings, a Condition Inspection Report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

The damage is not noted within the Condition Inspection Report. The Landlord has not provided sufficient evidence to prove that the Tenant is responsible for the damage to the back door. The Landlord's claim for \$70.00 is dismissed.

Cleaning costs

The Tenant agreed to pay the Landlord \$30.00 for the cleaning. I award the Landlord the amount of \$30.00.

July 2016, Rent

Section 45 (3) of the Act states that if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the Tenant gives written notice of the failure, the Tenant may end the tenancy effective on a date that is after the date the Landlord receives the notice.

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms provides clarification of a breach of a material term of a tenancy. The Guideline states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

I find that the Tenant did not end the tenancy in accordance with requirements under section 45(3) of the Act.

The Tenant is obligated to pay the rent for July 2016.

I grant the Landlord's claim for \$1,400.00 for July 2016, rent.

Security Deposit

I find that the Landlord complied with the requirements for a condition inspection report with the Tenant or the Tenants agent, at the start and end of the tenancy. The Landlord made Application for Dispute Resolution to retain the deposits within 15 days of receiving the Tenants forwarding address.

I order that the Landlord can retain the pet damage deposit and security deposit in partial satisfaction of the Landlord's claim.

The Landlord has established a claim in the amount of \$1,556.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord had success in her application, I

order the Tenant to pay the \$100.00 cost of the filing fee for this hearing. The Tenant owes the Landlord \$1,656.00

After setting off the security deposit of \$600 and the pet damage deposit of \$200.00 towards the claim amount of \$1,656.00, I find that the Tenant owes the Landlord \$856.00.

I grant the Landlord a monetary order in the amount of \$856.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant the Landlord a monetary order in the amount of \$856.00 on her claims. This order must be served on the Tenant and may be enforced in Provincial Court.

The Tenant's Application requesting compensation for a breach of her quiet enjoyment of the property is dismissed with 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: January 20, 2017

Residential Tenancy Branch