



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The "first hearing" on December 6, 2016 was adjourned at the request of the landlord. The tenant consented to this adjournment.

Tenant BT (the "tenant") and the landlords attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

In this hearing, all parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue –Settlement

Section 63 of the *Act* provides that if the parties settle their dispute during a hearing the Director may record the settlement in the form of a Decision or an Order. Pursuant to the above provision, discussion between the parties during the hearing led to a partial settlement / resolution. Specifically, the parties agreed and confirmed as follows;

1. The tenant and landlord agree the landlord may retain the tenants' security deposit in the amount of \$750.00;

2. The tenant and landlord agree the tenant will pay the landlord rent arrears of \$842.00, utility charges of \$313.00 and garbage disposal of \$25.00 for a total of \$1,180.00 less the \$750.00 security deposit for a total of \$430.00 no later than Tuesday, February 28, 2017;
3. The landlord will receive a monetary order as described below. The landlord consented that the landlord would not enforce the monetary order if the tenants paid within the time stipulated above.

So as to perfect this settlement agreement, I grant the landlord a monetary order in the amount of \$430.00. The tenants must be served with this order if the tenants fail to pay the monetary amount as described above. The above particulars comprise **full and final settlement of the described portions of the dispute arising from this application.**

This Decision, Monetary Order and Settlement Agreement are final and binding on both parties.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on January 1, 2010 on a fixed term until January 1, 2011 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,748.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$750.00 at the start of the tenancy. The tenants vacated the rental unit sometime between January 29 and January 31, 2016.

The parties agreed that move-in and move-out condition inspection reports were not completed. The landlords have submitted photographs taken before and after the tenancy.

The landlords seek a monetary order of \$3,938.00 in damages, including the following:

Wall Repairs & Painting. The landlords testified that the rental unit was fairly new, approximately one year of age, at the start of tenancy. The landlords testified that at the end of tenancy the walls were marked and dirty. The landlords submitted a handwritten note that indicates 10 hours of wall repair and painting were conducted for a total of \$250.00.

In reply, the tenant testified that any wall damage was a result of wear and tear over the six year tenancy.

Kitchen, Bathroom Cabinet Repair and Replacement. The landlords testified that the tenants significantly damaged the kitchen and bathroom cabinets. The landlords submitted an invoice from the cabinet company that conducted the repairs and replacement. The landlords seek to recover the \$2,110.00 spent on the cabinet replacement and repairs.

The tenant contended that the damage to the cabinets was a result of wear and tear. The tenant did not dispute that the photographs submitted by the landlord accurately reflected the condition of the cabinets at move-out.

Painting and Cleaning Supplies. The landlords seek to recover \$353.00 in painting and cleaning supplies purchased from the local hardware store. The landlords have submitted the receipts.

In response, the tenant testified that the receipts are dated prior to his vacancy and further he cleaned the rental unit before vacating.

Repairs. The landlords seek to recover \$625.00 for repairs. Specifically, repairs to the door jam, back door footing, closet doors, mouldings and toilet paper holder. The landlords have submitted an invoice for the above repairs.

The tenant testified that any of the damages described above are the result of wear and tear.

Security Monitor. The landlords testified that the security monitor worked at the start of tenancy, yet was not working after the tenancy ended. The landlords obtained an estimate in the amount of \$500.00 to repair the monitor, but have not submitted copy of this estimate.

The tenant testified that the security monitor never worked, at the start or end of tenancy.

Filing Fee. The landlords are also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is on the landlords to prove, on a balance of probabilities, 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 tenants 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the *Act*, establishes that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline # 1 “Landlord & Tenant – Responsibility for Residential Premises,” defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenants have used the premises in a reasonable fashion.

Wall Repairs & Painting. Residential Tenancy Policy Guideline # 1 establishes that landlords are responsible for painting, unless the landlord can prove the tenants have damaged the walls beyond reasonable wear and tear. Upon review of the before and after photographs, I find the landlord has not established the tenants have damaged the walls beyond six years of reasonable wear and tear. For this reason, I find the landlord is not eligible to recover the cost of wall repairs and painting. I dismiss this portion of landlords’ monetary claim

Kitchen, Bathroom Cabinet Repair and Replacement. Based on the photographs before me, I find the cabinets' sustained damage beyond reasonable wear and tear. The photographs depict a broken drawer, a missing cabinet door and significant wearing of the cabinet finish. For these reasons, I find the landlords are entitled to compensation for the damaged cabinets.

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of kitchen and bathroom cabinets is 25 years. The landlords testified that the subject cabinets were approximately seven years old at the time of refinishing. I find the landlords are entitled to recover the depreciated value of 72 percent of the total cost of \$2,110.00. Therefore I find the landlords are entitled to compensation in the depreciated amount of \$1,519.20 for the repair and replacement of the kitchen and bathroom cabinets.

Painting and Cleaning Supplies. As stated above the landlords have provided insufficient evidence to establish the tenants were responsible for excessive wall damage thereby making the tenants liable for painting costs. Therefore I dismiss this portion of the landlords' monetary claim due to insufficient evidence, without leave to reapply.

However, I find the tenants breached the *Act*, when they failed to clean the rental unit in its entirety. The photographs support that the tenants left some portions of the rental unit dirty. The receipts submitted by the landlord include both painting and cleaning supplies. In the absence of a clear monetary amount for cleaning, I grant the landlords a nominal award in the amount of \$100.00.

Repairs. The tenant did not dispute that the damages described by the landlords occurred during his tenancy; rather the tenant contended that these damages were a result of wear and tear. I find the landlords have failed to establish the required repairs other than the toilet paper holder were the result of neglect or deliberate action of the tenants. Rather I find with normal use, door jams, closet doors and mouldings become damaged over time. However, the photographs show the tenant had a functioning toilet paper holder at the start of tenancy and neglected to repair or replace it at the end of tenancy. For this reason I award the landlords \$25.00 of the \$625.25 repair claim.

Security Monitor. The landlords have provided insufficient evidence to establish the monitor was in working condition at the start of tenancy or that the tenants are responsible for the damage. Therefore, I dismiss this portion of the landlords' claim.

Filing Fee. As the landlords were partially successful in this application, I find that the landlords are entitled to recover \$50.00 of the \$100.00 filing fee paid for the application for a total award of \$1,694.20.

Conclusion

I issue a monetary order in the landlords' favour in the amount of **\$430.00** for the rent arrears, utility charges and garbage disposal. This monetary order is in relation to the settlement agreement above. The landlords consented that the landlords would not enforce the \$430.00 monetary order if the tenants paid no later than Tuesday February 28, 2017.

I issue a monetary order in the landlords' favour in the amount of **\$1,694.20** for the cabinet repair, cleaning, toilet paper holder and filing fee.

The landlords' application for a monetary order for wall repairs, painting, general repairs and security monitor are dismissed without 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 23, 2017

Residential Tenancy Branch