



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 landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

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

"Tenant CR" did not attend this hearing, which lasted approximately 95 minutes. The landlord and his agent, KG (collectively "landlord") and tenant WS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing. The tenant confirmed that he had permission to speak on behalf of his wife, tenant CR, also named in this application, as an agent at this hearing (collectively "tenants").

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties and the landlord's agent, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2014 and ended on June 26, 2016. Monthly rent in the amount of \$2,400.00 was payable on a biweekly basis in the amount of \$1,200.00 each. A security deposit of \$1,200.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and a copy was provided for this hearing. No move-in or move-out condition inspection reports were completed for this tenancy. No forwarding address was given to the landlord by the tenants when they vacated the rental unit. The landlord had written permission from the tenants to keep their entire security deposit of \$1,200.00 to pay for the last two weeks of June 2016 rent. The rental unit is a house with a basement.

The landlord seeks a monetary order of \$5,804.00 including the \$100.00 application filing fee.

The landlord seeks \$489.68 for the City water bill, stating that the tenants' monthly rent did not include water costs. The landlord provided a copy of one City water, garbage, sewer and recycling bill from June 1 to 30, 2016 indicating that the total amount for the month plus the arrears owing was \$489.68. The landlord said that he paid this amount, dating back to March 2016, on behalf of the tenants on August 8, 2016, because the tenants did not pay it before they vacated. The landlord did not provide a copy of the previous water bills, stating he did not realize he had to. The tenant claimed that the tenants are not responsible for sewer, garbage or recycling costs because those are costs borne by property owners. He said that the tenants were only required to pay water costs in addition to rent. He disputed the water costs, claiming that the tenants paid for all outstanding costs prior to vacating, since the water bills were in their name. The landlord then maintained that even if the tenants were not required to pay for sewer, garbage and recycling costs, they still had to pay for water costs, which he estimated at \$40.00 per month from March to June 2016, plus additional penalties for paying late.

The landlord seeks \$2,387.75 for carpet and underlay replacement, \$850.50 for the labour for the carpet work, and \$21.85 for odour remover for the carpet. The landlord provided invoices for all of the above work. The landlord said that the tenants had a cat that urinated on the carpet in the basement of the rental unit, causing a bad smell that could not be eliminated. He stated that even though the tenants had the carpet professionally cleaned, the landlord had it deodorized and cleaned again by the same company as the tenants used, but the smell would not come out. The landlord provided a note to this effect from the carpet cleaner employee. The landlord maintained that he was then advised to replace the entire underlay and carpet to get rid of the smell. The landlord provided photographs of the carpet and replacement. He explained that the carpet was only five to six years old, as it was replaced when the landlord bought the property on July 1, 2011. He claimed that the tenants never told him that they had pets, despite the fact that the parties signed a written agreement allowing the tenants to have pets at the rental unit. The landlord said that even though the previous tenants, who lived at the rental unit from October 2013 to November 2014, had a dog, there was no damage to the carpets during that time.

The tenant disputed the landlord's claim for carpet and underlay replacement, indicating that the carpets were original to the home from the year 2000. The tenant maintained that the previous tenant had a dog that caused stains in the carpet and the landlord has owned the home for five to six years total which has further damaged the carpet. He said that the rental unit smelled like urine when he first moved in and that the tenants had the carpets professionally steam-cleaned when they vacated.

The landlord seeks \$1,110.69 for removing and replacing the drywall, \$73.74 and \$51.23 and \$73.87 for buying materials and painting the walls in the rental unit. He provided invoices for all of the above work as well as photographs. The landlord claimed that the cat urine was all over the walls and it became so soft that he could push his finger through it. He said that a contractor inspected the walls and advised him to replace the drywall. He explained that the tenants' cat also scratched and gouged the walls of the rental unit. The landlord maintained that he painted the rental unit when he bought it and the walls were in good condition after the previous tenants vacated, even though they had a dog.

The tenant agreed to pay the landlord \$150.00 for the scratches and gouges in the wall, agreeing that his cat probably caused those damages and the tenants tried to repair all of it before vacating. The tenant disputes the remaining costs for the replacement of the drywall and resulting painting and materials for the walls. He claimed that the walls were soft because of a fire that occurred at the back of the rental unit and the drywall was not replaced properly after the fire resulting in thin drywall and insulation, poor

quality from moisture, and a mouldy and rotting house. The landlord disputed the tenant's claims about the fire, stating that it occurred in September 2012 on the back deck, ten feet away from the house, and he had the deck replaced professionally through his insurance company.

The landlord seeks \$351.02 to replace the master bedroom window because of a large crack in it. The landlord provided an invoice and a photograph for the above. The landlord said that the tenants never notified him of this crack, they hid it, and he noticed it after they moved out. The tenant disputes this cost saying that he did not cause the crack, it is related to the fire incident when the siding was poorly replaced and the window froze up with four to five inches of ice and cracked the glass. He said that this occurred sometime between December 2015 and February or March 2016. He explained that the tenants did not report the crack to the landlord because it was not a problem since it did not leak.

The landlord seeks \$250.00 for cleaning and \$27.64 for cleaning supplies because the tenants did not properly clean the rental unit when they vacated. The landlord provided receipts and invoices for the above costs. The landlord explained that he had to bleach the cement floor because of the cat urine, steam clean the carpets again which was unsuccessful, and he had to hire a cleaner for \$250.00 in order to clean the rental unit for 10 hours at \$25.00 per hour. The landlord also seeks \$16.74 for burned out lightbulbs that he said the tenants did not replace when they vacated. The tenant disputed the landlord's claims, stating that tenant CR properly cleaned the rental unit before the tenants vacated and left it in better condition than when they moved in to the unit. The tenant explained that the carpet was already professionally steam-cleaned by the tenants, as evidenced by the landlord's note from the cleaner, and the landlord had no need to re-clean the same area by the same cleaner.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must show that the tenants caused damage beyond reasonable wear and tear, satisfying 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$16.74 for the burned out lightbulbs that the tenants did not replace before they moved out. The landlord provided a receipt for the above cost. This cost is the responsibility of the tenants during the tenancy.

I award the landlord \$351.02 for repairing the broken master bedroom window. The landlord provided a photograph of the broken window. He provided an invoice for the work done. Although he did not provide a receipt to confirm that he paid for the invoice, I accept his affirmed testimony that he paid for it and had the receipt at home. I find that the tenants are required to inform the landlord of any repairs required during the tenancy, particularly when they claimed that they did not break the window and it happened due to ice cracking the glass. The tenants said that the window broke sometime between December 2015 and March 2016 but they did not report it because it was not a problem and it was not leaking. Because the tenants failed to report the issue, covered the window and the landlord was not informed about it until he checked the window himself, I find that the tenants are unable to show that the glass cracked due to ice and are responsible for this cost.

I dismiss the landlord's claim of \$489.68 for the City water, sewer, garbage and recycling bills. I find that garbage collection was included in the tenants' monthly rent, as per the parties' written tenancy agreement which specifically states that at page 2. I also find that the landlord did not demonstrate that the tenants owe additional costs for recycling and sewage fees in addition to rent, as these are usually costs borne by a property owner and not by tenants without a specific written agreement. These items were not included in the "additional information" box of what is or is not included in the monthly rent on page 2 of the tenancy agreement. While the tenants were required to pay for water costs in addition to rent, I find that the landlord failed to provide all of the utility bills and the breakdown for each month, failing part 3 of the above test. The landlord only provided one bill from June 2016 and claimed for a backdated amount based on the same bill, without providing the bills that he said he had in his possession. I do not accept the landlord's estimate that the tenants owed an average of \$40.00 per month for the water fees for four months plus additional penalties for paying late. I dismiss the landlord's claims for \$2,387.75 for the carpet and underlay replacement, \$850.50 for the labour for the carpet work, and \$21.85 for the odour remover for the carpet, without leave to reapply. I find that the landlord failed to prove that the cat urine smell was beyond a reasonable smell, whereby the entire basement carpet had to be replaced. The landlord did not provide documentary evidence to show that the carpet company viewed the carpet and advised him to replace it because of the smell. The

tenant said that he had the carpet professionally steam-cleaned and the landlord provided a document indicating that he used the same company to clean the carpets again after the tenants did so. Moreover, the previous tenants in the basement also had a dog and created stains in the carpet, as per the tenant's testimony.

The landlord also failed to provide photographs taken before the tenants moved in or produce a move-in condition inspection report to demonstrate the condition of the carpets when the tenants moved in. Further, the age of the carpet appears to be at least five to six years old or more according to the landlord and original to the home according to the tenant. I find that the landlord was unable to prove the exact age of the carpet and did not provide documentary evidence showing that he replaced the carpet in the basement five to six years ago. Residential Tenancy Policy Guideline 40 states that the useful life of carpets is 10 years. Therefore, the carpets would likely have to be replaced soon in any event.

I award the landlord \$150.00 for the paint and material costs for the wall because the tenant agreed to pay this amount during the hearing for the gouges and scratches from his cat. I dismiss the remainder of the landlord's claims for removing and replacing the drywall in the amount of \$1,110.69, buying materials and painting the walls in the rental unit in the amounts of \$73.74 and \$51.23 and \$73.87. The landlord failed to provide photographs taken before the tenants moved in or produce a move-in condition inspection report to demonstrate the condition of the walls when the tenants moved in. Further, the age of the paint appears to be more than four years old according to the landlord, who said that the interior paint was there since before the previous tenants moved in October 2013. Residential Tenancy Policy Guideline 40 states that the useful life of interior paint is 4 years. Therefore, the walls would likely have to be repainted in any event. Further, I find that the landlord failed to prove that the cat urine caused the walls to become soft and require replacement of the drywall. The landlord did not provide documentary evidence to show that the drywall company viewed the drywall and advised him to replace it because of the cat urine soaking through.

I dismiss the landlord's claim for \$250.00 for cleaning and \$27.64 for cleaning supplies. I find that the landlord failed to provide sufficient evidence to show that the tenants failed to properly clean the rental unit when they vacated. The landlord claimed that the photographs of the dirty condition of the rental unit were not submitted because it was difficult to see the dirt in the photographs. The tenant claimed that tenant CR properly cleaned the rental unit when the tenants vacated.

The landlord continues to hold the tenants' security deposit of \$1,200.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit, totalling \$1,200.00, to pay for the last two weeks of June 2016 rent, as agreed by the tenants.

As the landlord was only partially successful in this application, I find that he is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,200.00 in partial satisfaction of the monetary award made at this hearing.

I issue a monetary order in the landlord's favour in the amount of \$517.76 against the tenants. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is 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: February 27, 2017

Residential Tenancy Branch