



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenants.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

Rule of Procedure 3.11 states that evidence must be served and submitted as soon as reasonably possible. If an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence. Rule 3.15 stipulates the respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

At the outset of the hearing the landlord explained that shortly after the tenants moved out of the property his family faced a significant health related emergency that has been affecting all aspects of their life since and he was only able to recently prepare for this hearing.

I am satisfied by the submissions of both parties that they each received their evidence within the above noted deadlines as set forth in the Rules of Procedure. I also confirmed with both parties that they had had a chance to consider the evidence and were prepared to respond during this hearing.

As a result, I find there is no prejudice to the respondent tenant for receipt of the landlord's evidence at the time it was served and that the landlord had justifiable reasons for a delayed service of that evidence. I allowed the hearing to proceed and have considered all documentary and oral evidence submitted.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for compensation for cleaning of and damage to the residential property and rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed that they had been through a number of consecutive fixed term tenancy agreements that began when the tenants moved into the rental unit on October 1, 2012 and that they vacated the rental unit on or before June 30, 2016. The parties confirmed the tenants paid a security deposit in the amount of \$925.00 and that the rent by the end of the tenancy was in the amount of \$2,050.00 due on the 1st of each month. The tenancy ended on June 30, 2016.

The landlord submits that at the end of the tenancy the tenants left the rental unit in a condition that required significant cleaning and repairs. He testified that while he is not claiming for all repairs because he has determined the other repairs to be based on regular wear and tear and seeks only compensation for the damage that he believed to be beyond that level of damage.

The landlord testified that he went to the unit on move out day around 12:30 p.m. and that the unit still required cleaning. He stated that the final move out inspection was completed around 6:30 p.m. The landlord submitted that the tenant did not agree with his assessment of the property and refused to sign the move out Condition Inspection Report.

The landlord explained that when the unit was not sufficiently clean for the new occupants of the property he had to hire a cleaner who charged \$17.00 per hour for 7 hours work and that he could not get a cleaner for the full cleaning that was required so he worked an additional 8 hours at \$20.00 plus supplies estimate of \$25.00. The landlord seeks compensation in the amount of \$304.00 for costs related to cleaning.

The landlord submits that as an additional consequence to this requirement for cleaning his new occupants could not move into the unit when they were supposed and he reimbursed them a per diem amount of \$80.00.

The landlord submitted that prior to the end of the tenancy the tenant informed that landlord on June 5, 2016 that the toilet was plugged. The landlord submitted that a blue ball was lodged in the toilet and required a plumber to remove the toilet; dislodge the ball; and then replace the toilet at a cost of \$120.00. The landlord did not provide a receipt or invoice for this cost.

The parties agree that during the tenancy the tenant had to break into the backdoor of the rental unit. The landlord submitted that there was no reason for the tenant to break down the back door and that while the landlord made a temporary fix after the damage originally occurred at his expense and the tenant never repaired the door. As such the landlord seeks compensation for the repair at the end of the tenancy.

The landlord submitted that there was significant damage to a number of areas inside such as in the entry; the stairwell; and master bedroom. The landlord submitted that the tenant had installed a safety gate that when removed left significant damage and required repair. He also submitted that there were several large wood screws and several large screw holes in the bedroom. He believed that these were where the tenant secured cabinets to the walls. He stated that the furnace room door was missing and found stored outside with such significant damage that it had to be replaced.

For the above noted repairs the landlord seeks a total compensation of \$1,308.24. In support of this claim the landlord has submitted copies of the Condition Inspection Reports; several photographs and receipts, invoices and/or estimates for the work outlined and paint supplies.

The landlord also seeks compensation in the amount of \$119.94 for the removal of garbage and weeds from the residential property and the cost to re-seed an area to grass that the tenant had set up as a garden and as recorded in the Condition Inspection Report. The landlord has provided a copy of a receipt for yard maintenance labour and a receipt for grass seed.

The landlord submitted that even though the tenants returned some keys there were none returned that worked for the back door; garage or storage room and the landlord had to have them replaced. In support the landlord submitted a copy of a receipt from a locksmith in the amount of \$94.50.

In general, the tenant responded to the landlord's claims by suggesting that none of the claims make any sense and that he questioned some of the landlord's evidence. The tenant stated that it makes no sense that the landlord would repeatedly enter into new tenancy agreements with him if the landlord did not appreciate the way the tenant cared for the property.

Specifically the tenant submitted:

- "...was the third landlord for this property, never met him before that. He inspected the house regularly and never had a complaint about it, so did the previous landlords.
- If he claims that the house was dirty and full of spider webs why renew our tenancy agreement and keep us for 4 years.
- He makes unreasonable and unfair demands and expect the tenant to pay for normal wear and tear.

- Got permission from previous landlord for the child safety gates.
- Provided no estimate before hand and no receipts afterward to us.
- Cleaned the house to the best of our abilities.
- Filled out the original condition inspection report without me present as my signature is not there.
- Made false report in the Condition Inspection Report about the stove, even though this stove was a used replacement that came from his old house and that he provided for the older stove that we had that was not working properly and took him from Nov, 16, 2015 until March, 14, 2016 to replace. The replacement stove was an older stove and we only used it from March 14 to June 30, 2016 (as seen in the text message evidence provided)
- Highly exaggerated Condition Inspection Report.
- Gave him all the keys to the doors yet he claims that i didn't, why would i keep keys that I don't need and why not give it to him.
- Waited till the last minute to send his evidence in hopes to give me less time to respond.
- Mr. Paul did the same thing with our next door neighbour Mr. JM. (as described in his letter that i provided as evidence)
- Raised the rent by \$200, more then the allowable 6% (\$111)." [all above bullets reproduced as written, except to remove the neighbours name]

The tenant also submitted that he questioned the following evidence submitted by the landlord:

- The Condition Inspection Report – the tenant submitted that he believed this was “highly exaggerated” and was completed without him present;
- The locksmith's invoice – he stated that he never met the locksmith would have no knowledge of why the landlord was requesting keys except for what the landlord told him;
- Text messages – the tenant submitted that because landlord only submitted some text messages but did not provide the full context of the conversation that would show “he was delaying the deposit in hopes that he keeps it”;
- The tenant submitted that the landlord's photographs of the back yard were taken on June 28, 2016, before the end of the tenancy and before the work was completed by the tenant;

The tenant disputes the amount of the landlord's claim for cleaning. He stated that he hired a cleaning person for \$119.00 and he is charging an additional \$185.00 for himself.

The tenant questioned the legitimacy of the landlord's claim for repairs to the backdoor. He stated that it was fixed over a year before the end of the tenancy and the landlord should not be claiming it now. He also stated that he had to break in to the backdoor because the front lock was not working. The landlord submitted there was nothing wrong with the front door lock.

In regard to the landlord's claim to replace the bi-fold doors the tenant testified that he had brought the problem to the landlord's attention many times but the landlord never fixed them and it was the landlord who left them outside during the tenancy.

The tenant confirmed that he did not provide the landlord with his forwarding address at the time of the move out inspection because he did not have it at the time. The tenant submitted that he mailed it to the landlord but he could not remember exactly what date. The landlord testified that he received it on July 29, 2016. The tenant agreed that this sounded to be about the correct timing.

The landlord submitted his Application for Dispute Resolution on August 11, 2016.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Upon consideration of the landlord's documentary evidence including the Condition Inspection Report; his photographs; and invoices/estimates/receipts, I find, on a balance of probabilities the landlord has established the condition of the rental unit at the end of the tenancy was as recorded in the Condition Inspection Report. Therefore, I find the tenant has failed to fulfil his obligation to leave the rental unit reasonably cleaned and undamaged, pursuant to Section 37 of the *Act*.

I find the landlord has also established that as a result of the condition and the work required to clean and repair the property for damage beyond reasonable wear and tear the landlord has suffered financial loss. I am satisfied, with one exception that the landlord has established the value of that loss to be as claimed.

I am not convinced that the landlord should be compensated for his labour in cleaning at a higher rate than the only rate he has provided by a professional cleaner in his area. As such, I find the landlord is entitled to compensation for his own labour at a rate of \$17.00 per hour as opposed to the \$20.00 per claimed.

I find that throughout the proceeding and in his written submissions the tenant's submissions were vague; unresponsive; not relevant; and evasive and as such, I find the tenant's testimony and submissions to be unreliable.

By way of example, I find the tenant's constant reference to the unlikelihood that the landlord would reinstate their tenancy so many times if he was taking good care of the property provided no evidence or relevance to what the condition of the rental unit was at the end of the tenancy.

Further, the tenant asserted that he did not sign the Condition Inspection Report because the landlord completed the inspection without him. However, this does not explain why the tenant did not sign the Report stating that he did not agree with the condition as reported. The tenant also did not explain why he didn't go through the report with the landlord then at the time to change the report.

In addition, the tenant's response to a number of issues raised in the landlord's claim included statements such as "why would I not give the landlord the keys back – it makes no sense" or in relation to cleaning the tenant submitted "we did the best we could" and "we might have missed a few spots". I find these answers to be vague and providing no value to the determination of the condition or issues identified by the landlord.

Even in regard to the tenant's submission regarding the text messages I note the landlord has submitted only one item that he has identified as a text message and the tenant has provided at least 57 items that he has identified text messages. However, the documents submitted by the tenant appear to be a transcript of text messages and not the actual text messages.

While the tenant asserts text messages dated June 23, 2016 between him and the landlord, for example, confirm an agreement that the landlord was going to allow the tenant to use his handyman to do yard work for 1 hour; I find the documents submitted, if they are text messages, only confirm that the landlord and the tenant were going to meet to discuss something in regard to the back yard. There is no evidence supporting the tenant's claim that the yard work was completed prior to the end of the tenancy.

In addition, the damage inside the rental unit the tenant claims is either just normal wear and tear or that he had permission from previous landlords to install the child safety gate and the garden. However, the landlord submitted that he has no record of any such approvals and the tenant provided nothing in writing to confirm these agreements.

Even if the tenant had a previous landlord's approval to install a safety gate or convert a portion of lawn to a garden, the landlord has the right to have the rental unit and residential property be put back in the condition it was in prior to the installation or conversion at the end of the tenancy.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,102.68** comprised of \$280.00 cleaning; \$80.00 compensation to incoming tenant; \$120.00 toilet repair; \$1,308.24 repairs; painting; \$119.94 yard work; \$94.50 locksmith charges and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$925.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,177.68**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 7, 2017

Residential Tenancy Branch