



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 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; 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 the return of double the security deposit.

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 Landlord is seeking compensation for unpaid rent. The parties participated in a previous dispute resolution hearing on August 17, 2016. The Landlord made submissions at the previous hearing that the Tenant was still present in the unit in August 2016. The Arbitrator accepted the Tenant's testimony that he left the premises on July 10, 2016, pursuant to a 10 Day Notice, and awarded the Landlord a pro-rated amount of rent.

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of Res Judicata. Res Judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

I find that the Landlord's application for unpaid rent is an issue that was decided in an earlier hearing. I note that the Landlord did apply for a review consideration and the application was considered and dismissed. The Landlord's request for a monetary order pertaining to rent is dismissed. The Landlord's request for a monetary order for damage will proceed.

During the hearing the Tenant stated that he is feeling bullied. The Tenant was asked to explain his statement and he stated that I was not listening to him. Earlier in the hearing, on a couple of occasions, I had to warn the Tenant for interrupting me as I was speaking. I commented to the Tenant that he is not being bullied but he is being asked to be respectful. The Tenant was asked to provide further examples of why he is feeling bullied and he responded by saying forget about it.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Is the Tenant entitled to double the security deposit?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on November 15, 2015, as a fixed term tenancy to continue until October 31, 2016. Rent in the amount of \$1,900.00 was due on the first day of each month. The Tenant paid a security deposit of \$950.00 to the Landlord. The tenancy ended on July 10, 2016, when the Tenant moved out pursuant to a 10 Day Notice.

Tenant's Application

The Tenant is seeking compensation in the amount of \$1,900.00 for the Landlord's failure to return the security deposit at the end of the tenancy.

The Tenant submitted that he provided the Landlord with his forwarding address in writing on September 5, 2016. The Tenant provided a copy of a text message sent to the Landlord on September 5 that provides the Tenant's address and also states the Tenant has given his address to the Landlord four times.

The Tenant testified that the Landlord has not returned the security deposit and did not make an application for dispute resolution to keep the deposit. The Tenant testified that there was no written agreement that authorized the Landlord to keep the deposit.

The Tenant testified that he participated in a move in inspection of the rental unit with the Landlord, but he did not participate in a move out inspection. The Tenant testified that he works 12 -15 hours per day and the Landlord had other people present that made him uncomfortable, so he told the Landlord he would not participate in another inspection.

The Tenant provided copies of text messages dated June 27, sent to the Landlord where he is seeking the Landlord to set up a move out inspection. The Tenant provided further text messages dated in August in regards to arranging a move out inspection.

In response, the Landlord testified that they received the Tenant's forwarding address on September 5, 2016. The Landlord testified that the Tenant refused to participate in a move out inspection on September 5, 2016, so the Landlord did not offer another date for an inspection.

The Landlord testified that they did not return the security deposit to the Tenant, because the Tenant did not want to do a move out inspection. The Landlord did not feel they needed to return the deposit.

Landlord's Application

The Landlord is seeking compensation in the amount of \$1,000.00 for having to paint the rental unit. The Landlord testified that the Livingroom and entry hallway was painted.

The Landlord testified that when the Tenant moved out of the rental unit there were holes and scratches on the walls. The Landlord testified that the Tenant attempted repair the holes and marks using a wall patching compound.

The Landlord testified that her father painted the rental unit and is seeking compensation for the materials and labour.

The Landlord provided photographs of the rental unit taken in September after the Tenant moved out showing discolored marks, a dent, and a large crack on the wall. The Landlord testified that the rental unit was painted in September 2015, just prior to the Tenant moving in.

In response, the Tenant testified that the rental unit was in poor condition at the start of the tenancy. He submitted that the walk through inspection at the start of the tenancy shows the unit was in poor condition. The Tenant did not provide a copy of the inspection report. He testified that he is not responsible for the damage shown in the Landlord's pictures. The Tenant testified that he filled all the holes.

The Tenant testified that the Livingroom is 70 - 80% glass. The Tenant testified that the crack above the door in the hallway is a foundational crack that he is not responsible for.

The Landlord responded by agreeing that the Livingroom is 60% glass. The Landlord submitted that she does not agree that the crack above the door was caused by the foundation settling.

Analysis

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

Tenant's Claim

I find that the Landlord knew the Tenant's forwarding address as of September 5, 2016.

The Landlord is required to offer the Tenant opportunities for an inspection at the end of the tenancy. I find that Tenant was seeking an inspection, and despite the tenancy ending in July 2016, the Landlord was not responsive to agreeing to an inspection until September 5, 2016. The Landlord has the onus to arrange the inspection. Due to the Landlord's lack of urgency in arranging the inspection for over a month, and failure to offer the Tenant another opportunity for an inspection, I find the Landlord extinguished the right to claim against the deposit.

I find that the Landlord breached section 38(1) of the Act by not repaying the security deposit to the Tenant within 15 days of receiving the Tenant's forwarding address. I find that there was no authority for the Landlord to withhold repayment of the security deposit.

Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

I grant the Tenant a monetary order in the amount of \$1,900.00.

Landlord's Claim

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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 Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

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

Neither party provided a copy of a condition inspection report that was completed at the start of the tenancy. I find that there is no documentary evidence before me that shows the condition of the rental property at the start of the tenancy.

The Landlord's testimony that the Tenant was responsible for scratches, dents, and a crack, conflicts with the testimony of the Tenant that he is not responsible for the damage and that the damage was pre-existing at the start of the tenancy. When two parties provided different but equally believable testimony, the party making the claim bears the burden of proof. The Landlord provided insufficient evidence on the condition of the rental unit at the start of the tenancy.

The Landlord's claim for compensation for painting due to the Tenant causing damage is dismissed.

Result

The Landlord's application to be compensated for labour and materials for painting the rental unit is dismissed.

The Tenant is awarded a monetary claim in the amount of \$1,900.00 for the return of double the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application, I order the Landlord to pay for the \$100.00 cost of the filing fee for this hearing.

I grant the Tenant a monetary order in the amount of \$2,000.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord's application to be compensated for labour and materials for painting the rental unit is dismissed.

The Tenant is awarded a monetary claim in the amount of \$1,900.00 for the return of double the security deposit.

I grant the Landlord a monetary order in the amount of \$2,000.00. This order must be served on the Landlord and may be enforced in Provincial 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: May 26, 2017

Residential Tenancy Branch