



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

On November 4, 2016, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent and damage to the unit; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

Both parties were present at the hearing. The Landlord's agent Ms. A.N. appeared on behalf of the Landlord. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the 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 began on December 1, 2015, as a fixed term tenancy to continue until October 30, 2016. Rent in the amount of \$2,400.00 was to be paid on the first day of each month. The Tenants paid the Landlord a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00. The Landlord provided a copy of the tenancy agreement.

The Landlord is requesting compensation as follows:

Painting	\$3396.00
Remote Control	\$50.00
Water Bill	\$208.44
total	\$3,654.44

Painting

The Landlord's agent submitted that the Tenants were smoking in the rental unit. She submitted that the tenancy agreement contains a term that smoking is not permitted. She submitted that the smoking was witnessed by the Landlord. She submitted that the Tenants acknowledged that there was smoking in the unit.

The Landlord submitted an invoice from a plumbing and heating service that indicates an accurate CO reading was not achieved due to marijuana smoking in the house. The Landlord also found a cannabis card in the male Tenants name.

The Landlord's agent submitted that after the Tenants moved out the Landlord had the interior of the 1900 square foot house re-painted. She submitted that the interior of the house had been painted 8 months prior to the Tenants moving in.

In response, the Tenants testified that they are not smokers and there was no smoking of cigarettes or anything else in the unit. The Tenant, Mr. G.F. testified that he has not smoked marijuana on the property or in the rental unit. He testified that he uses the cannabis card for CBD oil, a cannabis concentrate in pill form. He testified that the heating service invoice regarding CO readings is likely due to carbon from the fireplace.

The Tenants submitted that the Landlord never witnessed any smoking in the rental unit. The Tenants submitted that the only reason the Landlord was aware of smoking is because they informed the Landlord that a friend of theirs had smoked marijuana in the garage. They submitted that they had a friend spend the night, and they allowed him to smoke marijuana in the garage. They testified that it was a one-time incident. They testified that when they informed the Landlord, she reacted very strongly.

The Landlord's agent testified that she did not witness the Tenants smoking in the rental unit. She testified that the garage was not repainted.

Remote Control

The Landlord's agent testified that the garage door remote control was missing at the end of the tenancy. The Landlord is seeking \$50.00 for the replacement cost of the remote control. The Landlord provided an invoice for the replacement cost.

In response, the Tenants agreed to pay the cost to replace the remote control.

Water Bill

The Landlord's agent testified that there was a term in the tenancy agreement that the Tenants were responsible to pay for water. The Landlord is seeking \$208.44 for an unpaid water bill.

In response, the Tenants agreed to pay the amount of the water bill.

Security Deposit

The Landlord is seeking to keep the security deposit and pet damage deposit in partial satisfaction of the claim.

Analysis

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 before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

Painting

The burden of proof to substantiate a claim rests with the Applicant. I find that the tenancy agreement contains a term of no smoking allowed on the property; however, the Landlord was not present to give affirmed testimony that smoking was observed in the rental unit or on the property.

I find that there was an incident of smoking in the garage, but insufficient evidence to prove there was smoking in the rental unit. There was no evidence provided by the Landlord showing that there was damage in the rental unit that was caused by smoking.

I have considered the plumbing and heating invoice that suggests there was marijuana smoking in the unit, but the notation does not indicate that evidence of marijuana smoking was actually found or how it was established. The report indicates there was a dirty filter. The Tenant submitted that the CO readings were affected by carbon from the fireplace. In addition, the Tenant's cannabis card is not proof that the Tenant smoked marijuana in the rental unit.

The Landlord has provided insufficient evidence to prove that the Tenants smoked in the rental unit. The Landlord's claim for \$3,396.00 is dismissed.

Remote Control

During the hearing, The Tenants agreed to pay the \$50.00 replacement cost for the remote control. I award the Landlord \$50.00.

Water Bill

During the hearing, The Tenants agreed to pay the \$208.44 for the water bill. I award the Landlord \$208.44.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was partially successful with her application. I order the Tenants to repay the \$100.00 that the Landlord paid to make application for dispute resolution.

I order that the Landlord can keep \$358.44 from the security deposit in satisfaction of the Landlord's claim.

I find that the Landlord has established a total monetary claim of \$358.44 comprised of \$258.44 for the remote and water bill; and \$100.00 for the fee paid by the Landlord for this hearing. After deducting this amount from the security deposit and pet damage deposit, I find that the Landlord must return the balance of \$2,041.56 to the Tenants.

Conclusion

The Landlord has established a monetary claim in the amount of \$358.44. I order that the Landlord can keep \$358.44 from the security deposit in satisfaction of the Landlord's claim.

I order the Landlord to return the balance of balance of the deposits in the amount of \$2,041.56 to the Tenants.

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 16, 2017

Residential Tenancy Branch