



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, FF

Introduction

On April 24, 2017, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for unpaid rent and damage and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenants attended the hearing. 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 compensation for damage to the rental unit and for a loss of rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began in May 2015, and ended in September 2016. Rent in the amount of \$775.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$387.50.

The Landlord is seeking compensation in the amount of \$9,483.78 for the following items:

Unpaid previous claim	\$2,037.50
Loss of rent	\$3,100.00
Change of lock	\$187.32
Pest inspection	\$105.00
Pest extermination	\$887.25
General repair	\$1,649.64
Court registration	\$100.00
Postage	\$11.91

Light fixture /curtains	27.98
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Unpaid Previous Award

The parties participated in a previous hearing where the Landlord was awarded \$2,037.50 for unpaid rent. The Landlord provided a copy of the Decision. I note that in that hearing the Tenants testified they vacated the unit on September 16, 2016, and the Landlord testified that the Tenants abandoned the unit on September 26, 2016.

The Landlords request to include a previous award is dismissed. The Landlord already received a monetary order for the amount he is claiming.

Loss of Rent \$3,100.00

The tenancy ended on September 26, 2016. The Landlord testified that he could not rent the unit out until February 2017, because he needed time to get the rental unit into shape. The Landlord testified that he needed to paint and make repairs to the rental property.

The Landlord testified that he had the understanding that he needed to leave the Tenants' possessions in the unit for 30 days before he could remove them.

The Landlord testified that he tried to have the work completed as quickly as possible.

In response, the Tenant testified that there was pre-existing damage to the rental unit when they moved in. The Tenant testified that the rental unit was infected by bedbugs and the Landlord's agent, Ms. D.T. refused to take any action to deal with the problem.

The Tenants testified that they did not have any issues with bedbugs prior to moving into the rental unit.

Cleaning and Dump Costs \$1,277.18

The Landlord testified that the Tenants left their possessions in the rental unit and he had to take the possessions to the dump over a six day period. The Landlord provided a copy of a receipt in the amount of \$1,277.18 for the cost of removing and disposing of the Tenants' possessions.

The Landlord provided a letter from a caretaker that states the unit was left in a disgusting condition, full of garbage and furniture.

The Tenants testified that the Landlord did not take action to deal with a bedbug infestation problem and they left their furniture; clothing; bedding; mattress; and food in the unit when they moved out because of the infestation.

Locks \$187.32

The Landlord testified that the Tenants failed to return the keys to the unit at the end of the tenancy. The Landlord testified that he needed to ensure they would not re-enter so he changed the locks. The

Landlord provided a receipt for service provided by a locksmith on September 21, 2017, for materials and labour to change the locks.

In response, the Tenants testified that they could not remember if they returned the keys to the Landlord and stated that it is possible that they did not.

Pest Inspection \$105.00

The Landlord testified that the Tenants left food behind which attracted bugs such as silverfish, flies and maggots. He testified that he had a pest control company inspect the unit on November 7, 2016. The Landlord provided a copy of a receipt from a pest control company in the amount of \$105.00.

The Landlord provided a copy of an email dated November 4, 2016, from a pest control company that confirms the Landlord contacted the company to arrange an inspection of the rental unit for bedbugs.

Pest Extermination \$887.25

The Landlord testified that the pest control company returned on November 10, 2016, to fumigate the entire house. The Landlord provided a copy of a receipt dated November 10, 2016, from a pest control company in the amount of \$887.25.

The Tenants disagree with the Landlord's claims for pest control costs. They submitted that they showed the Landlord's property manager the problem with bedbugs and the Landlord did not take any action.

General Repair and Painting \$1,649.64

The Landlord testified that there were fist sized holes in the walls which required repair and the unit needed to be painted. The Landlord testified that new doors and baseboards were required. The Landlord testified that the rental unit was last painted in 2008. The Landlord provided a receipt dated January 27, 2017, from a contracting company for painting and repairs in the amount of \$1,649.64.

In response, the Tenants testified that they did not put any fist holes in the walls. They testified that the only holes in the walls were from screws for a wall mount for their television. They testified that they did not damage the baseboards. They submitted that the bathroom door was already damaged when they moved in. They testified that nothing had been done to the rental unit prior to when they moved in.

Court Registration

The Landlord is seeking \$100.00 to recover the cost to file a claim against the Tenants at Provincial Court for a payment hearing. The Landlord testified that he filed a claim in February 2017.

In response, the Tenants testified that they have no knowledge of the Landlord's claim and they stated that they have not been served by the Landlord or anyone else regarding a hearing.

Postage

The Landlord is looking to recover the cost of postage for serving the Notice of Hearing. The Landlord is seeking \$11.91.

Light Fixture /Curtain \$27.98

The Landlord is seeking to recover the cost of purchasing a ceiling fixture and a curtain for the bedroom in the rental unit. Other than a receipt for purchasing replacements, the Landlord did not provide any documentary evidence in support of his claim.

In response, the Tenants submitted that other than the curtain in the Livingroom, there were no curtains in the unit when they moved in. The Tenants submitted that the ceiling fixture was missing when they moved in.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, and proof that the party took all reasonable measures to mitigate their loss.

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.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Landlord is responsible for painting the interior of the rental unit at reasonable intervals.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The Residential Tenancy Policy Guideline #40 useful Life of Building Element's provides that the useful life of interior paint is four years.

After considering the testimony of the Landlord and Tenants, and on balance of probabilities, I make the following findings:

Cleaning and Dump Costs \$1,277.18

I find that the Tenants left their furniture and possessions in the rental unit when they moved out on September 16, 2016.

While I acknowledge the Tenants testimony that their possessions were infested with bedbugs, this does not absolve them of the responsibility to dispose of their items and leave the rental unit in a clean condition. The appropriate action would be to dispose of the possessions and clean the unit and then seek compensation from the Landlord. The Tenants could have applied for a dispute resolution hearing.

I find that the Tenants are responsible to pay the costs incurred by the Landlord for the cleaning and dumping costs.

I award the Landlord the amount of \$1,277.18

Locks \$187.32

I find that it is more likely than not that the Tenants failed to return the keys to the Landlord.

I grant the Landlord the amount of \$187.32 for the cost of changing the locks.

General Repair and Painting \$1,649.64

The parties provided conflicting testimony regarding the state of repair of the rental unit. The Landlord testified that the unit was last painted in 2008.

The Landlord failed to provide a copy of a Condition Inspection Report as required under section 23 and 35 of the Act to show that the Landlord and Tenant participated in an inspection of the rental unit at the start and end of the tenancy. The Landlord did not provide any photographic evidence.

When two parties provide equally believable affirmed testimony, the burden of proof rests with the applicant.

I find that the Tenants are not responsible for the costs of painting the unit because the paint was beyond its useful life.

With respect to repairs, the Landlord has provided insufficient evidence that the Tenants are responsible for damage to the rental unit.

The Landlords claim for \$1,649.64 is dismissed.

Loss of Rent \$3,100.00

The Landlord's claim to be compensated for a loss of rent is dismissed. I find that there is inconsistent testimony and evidence from the Landlord on when he was able to take possession of the rental unit.

In the previous hearing the Landlord testified that the Tenants abandoned the rental unit on September 26, 2017. This is in conflict with the receipt he provided for the locksmith that shows he had the locks to the unit changed on September 21, 2016. The Landlord testified in the hearing that he discovered the Tenants had moved out on September 26, 2016, and testified that he needed to wait for 30 days before dealing with the tenancy.

The Landlords receipts for dumping; cleaning; pest control; painting and repairs to the unit range from October 29, 2016, to January 27, 2017, which is a period of more than four months after the locks were changed.

I find that there was no requirement for the Landlord to wait for 30 days before taking steps to prepare the unit for rental. The Landlord failed to establish that the Tenants were responsible for some of the work performed. Furthermore, I find that the Landlord did not complete the repairs in a timely manner. I find that the Landlord failed to mitigate against the loss of rent.

Pest Inspection and Pest Extermination

The Landlord's documentary evidence indicates that a pest control company received a request from the Landlord on September 8, 2016, to inspect for bedbugs.

The invoice from the same pest control company dated November 7, 2016, does not provide any information regarding what the company was looking for or what they found. I find it is reasonable to infer that the inspection included bedbugs.

The invoice from the pest control company dated November 11, 2016, does not provide any information regarding the reason for service.

The Tenant provided testimony in the previous hearing and this hearing that the rental unit was infested with bedbugs and that the Landlord was dragging his feet to take any action. The Landlord testified that the fumigation of the entire unit was for silverfish, flies and maggots.

I find that the reason for the fumigation included bedbugs. The Tenants testified they did not have bedbugs prior to moving in. I find for there is insufficient evidence from the Landlord to establish that the Tenant are responsible for the introduction of bedbugs into the unit or for the pest control costs for the inspection or for the treatment of bedbugs, silverfish, or flies.

Light Fixture /Curtain \$27.98

The Landlord did not provide photographic evidence or a condition inspection report to establish the presence of curtains or the light fixture at the start of the tenancy. The Landlord provided insufficient evidence to establish the claim. The Landlord's claim is dismissed.

Court Registration \$100.00

The Landlords claim for \$100.00 for an application to the Provincial Court is dismissed. I do not have jurisdiction to award a court cost.

Postage \$11.91

The Landlords claim for the cost of postage is dismissed. The Act does not specifically permit me to award compensation for service of documents.

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 his application. I order the Tenants to repay the amount of \$100.00 for the cost of the application.

Monetary Awards

The Landlord has established a monetary claim in the amount of \$1,564.50.

I grant the Landlord a monetary order in the amount of \$1,564.50. The order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlord established the claim for compensation in the amount of \$1,464.50 due to the cost of disposing of the Tenants furniture and possessions in the unit and for the cost to change the locks.

The Landlord is awarded the \$100.00 cost of the filing fee.

The Landlord is granted a monetary order in the amount of \$1,564.50.

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: November 2, 2017

Residential Tenancy Branch