



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other.

A question with respect to the landlord's Monetary Order Worksheet provided as evidence for this hearing was raised by one of the tenants, who indicated that additional wording and an amount appeared on the copy provided to the Residential Tenancy Branch but not on the tenants' copy. The landlord denied that there was any difference between the 2 copies.

No other issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

During the course of the hearing the landlord withdrew the application for a monetary order for unpaid rent or utilities.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2013 and expired on October 1, 2014 thereafter reverting to a month-to-month tenancy which ultimately ended on May 31, 2017. Rent in the amount of \$2,500.00 per month was payable on the 1st day of each month at the commencement of the tenancy, and was increased from time to time. Rent was \$2,670.00 per month at the end of the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,250.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in an apartment complex and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed by the parties at the commencement of the tenancy and a move-out condition inspection report was completed at the end of the tenancy by the parties. A copy of both reports has been provided and the move-out portion is dated May 31, 2017. The landlord testified that he received the tenants' forwarding address in writing on May 31, 2017 on the move-out condition inspection report.

The landlord has also provided a Monetary Order Worksheet setting out the following claims:

- \$560.00 for painting;
- \$280.00 for a damaged window stool molding;
- \$30.00 for damaged blinds; and
- \$500.00 estimated for replacing the washer.

The landlord also testified that the rental unit had been last painted more than 4 years ago, but walls also required repair from what appeared to be damage from furniture hitting walls, and many walls were damaged. An invoice in the amount of \$560.00 has been provided and a photograph of a scratched or damaged wall.

The landlord has also provided a photograph of the window sill which the landlord testified appears that water had leaked into the wood and it was exposed to sunlight and cracked.

The living room vertical blinds are broken and can't be attached at the top. A photograph of 2 blinds has been provided, but no receipt or invoice.

The landlord also testified that the temperature handle on the washer won't turn anymore, and the landlord cannot find someone to repair it because it's too old, about 10 years old. The landlord found an advertisement on Craigslist for \$500.00 and used that as the basis of the claim. A copy has not been provided for this hearing.

During the move-out condition inspection the parties agreed that there were damages and the tenants had asked the landlord how much the landlord estimated the costs to be, but the landlord replied that he wouldn't know till he had a contractor estimate it. Within a few days the landlord emailed the tenants with the figures and asked if they would prefer to get someone else to do the work or do it themselves. The email also mentioned a hydro bill for the last month of the tenancy. The landlord did not receive any reply but the tenants paid the hydro bill.

The tenant testified that the tenants left the rental unit in immaculate shape at the end of the tenancy and the tenants have provided photographs. There was no negligence and the tenants left the rental unit in better condition than it had been when they moved in.

The tenants had no control over the blinds which were old, the washer handle, or the window sill.

During the move-out condition inspection the parties discussed the walls in the master bedroom, but later the tenants read Residential Tenancy Policy Guideline 40 and the tenants do not believe the damage is beyond normal wear and tear. The tenant suggests that the rental unit has not been painted in at least 10 years.

The tenants have also provided written material to dispute each of the landlord's claims. The documentation shows that the tenants contacted the company whose name is on the Invoice for painting and repairing walls,

who advised that they are not in the business of painting or repairing in homes. The tenant suggests that the invoice isn't even legitimate.

The tenants' written material also suggests that the window sill was not damaged by the tenants, and speaks of humidity and a baseboard heater under the window.

The tenants paid the hydro bill before it was due, and the landlord ought not to have made that claim at all.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant testified that the rental unit had not been painted in 10 years, and the landlord testified it was definitely more than 4 years. I find that it was time to re-paint anyway. I have reviewed the move-in/out condition inspection reports and photograph of the landlord, and I find that the scratches shown are minimal and would be dealt with by a painter in the normal course. I find that it is not beyond normal wear and tear and the landlord has failed to satisfy element 2 in the test for damages.

I also accept the undisputed testimony of the tenant that the tenants did not damage the window sill, and that the damage was likely caused by condensation and heat, which is also the landlord's testimony. That is not damage caused by a tenant, and I dismiss that portion of the landlord's application.

The landlord has provided no evidence of the costs associated with the blinds, or their age, nor has the landlord provided any evidence with respect to the broken washer. I dismiss those claims.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

The landlord currently holds a security deposit in trust in the amount of \$1,250.00, and I order the landlord to return it to the tenants within 15 days of today's date. If the landlord fails to do so, the tenants will be at liberty to apply for double the amount.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to return to the tenants the full security deposit of \$1,250.00 within 15 days of today's date. If the landlord fails to do so, the tenants will be at liberty to apply for double the amount.

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 22, 2017

Residential Tenancy Branch