



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matter

At the outset of the hearing the tenants NP and MV stated that MV was not listed as a tenant in the landlord's application. The tenant wanted MV added. The landlord had no objection to adding MV to their claim. Therefore, I have allowed the amendment and the style of cause will be amended to include MV.

At the conclusion of the hearing both parties confirmed that they would like a copy of the decision and order sent by email. Email addresses were confirmed at the hearing and the covering page of this decision reflects those email addresses.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on November 1, 2015. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenants paid a security deposit of \$625.00. The tenancy ended on May 2, 2017.

The parties agreed a move-in and move-out condition inspection report was completed. The parties agreed that the security deposit was used towards items listed in the move-out condition inspection report.

The landlord claims as follows:

a.	Window replacement	\$ 70.00
b.	Replace broken stair beam	\$ 200.00
c.	Replacement of fridge crisper	\$ 104.00
d.	Exterior cleaning	\$ 57.50
e.	Dump fee and garbage removal	\$ 429.18
f.	Carpet replacement	\$ 1,079.93
g.	May 2017 rent	\$ 1,250.00
h.	Filing fee	\$ 100.00
	Total claimed	\$3,289.68

Window replacement

The landlord's agent testified that the window in the basement was broken. The agent stated they do not know how it broke. The landlord seeks to recover the cost to repair the window in the amount of \$70.00.

The tenants testified that they did not break the window. The tenants stated they hear the window break when they were upstairs; however, they have no idea how it was broken.

Replace broken stair beam

The landlord's agent testified that the beam holding up the stair railing was cracked and it was new during the tenancy, which had to be repaired. The landlord seeks to recover the cost of the repair in the amount of \$200.00. Filed in evidence are photographs of the damage beam and an invoice for repair.

The tenants testified that they were away when the beam was cracked. The tenants stated their roommates likely did it.

Replacement of fridge crisper

The landlord's agent testified that the crisper in the fridge was broken. The agent stated it was approximately two years old when the tenancy commenced. The landlord seeks to recover the amount of \$104.00. The landlord stated that they do not have an invoice for the repair.

The tenants testified that the crisper broke from normal use and the landlord is responsible to make the repair.

Exterior cleaning

The landlord's agent testified that the back deck was left dirty from seeping garbage and other debris and the deck had to be power washed. The agent stated that the tenants also left a large amount of cigarette butts and cat litter dumped in the garden by the front door. The landlord seeks to recover the remainder of the invoice in the amount of \$57.50.

The tenants testified that the back deck was dirty from normal wear and tear. The tenants do not deny there was cigarette butts and cat litter left by the door.

Dump fee and garbage removal

The landlord's agent testified that in the move out inspection the tenants agreed that there was stuff left behind at it would fill a cubed van. The agent stated that they gave the tenants an opportunity have the items moved, how the majority of it was left behind. The agent stated they applied the balance of the remaining security deposit of \$14.37. The landlord seeks to recover the remaining cost of removal and dump fees in the amount of \$428.18. Filed in evidence are photographs and a receipt.

The tenants testified that when they moved into the premises there were a lot of personal items of the deceased owner. The tenant stated that they were given permission to dispose of those items. The tenant stated that they did dispose of some of the items, but not all of them and the items that were left at the end of the tenancy were from the deceased landlord, not their personal property and they should not be responsible for the removal.

Carpet replacement

The landlord's agent testified that carpets were dirty at the end of the tenancy and the amount of \$262.50 was taken from the tenant's security deposit. The agent stated that the carpets would not come clean and the carpets had to be replaced. The agent stated that the carpets installed in 2013 and were four years old at the time of replacement. The landlord seeks to recover the depreciated value of the carpets in the amount of \$1,079.00.

The tenants testified that the carpets were in poor condition when they moved into the premises. The tenants stated they had area rug and a runner on the carpet. The tenants stated the carpets were not a high quality carpet.

May 2017 rent

The landlord's agent testified that they should be entitled to cover loss of rent due to the condition of the rental unit, as they were unable to rent the property for the month of May 2017.

The tenants testified that the premise was not going to be re-rent after they vacated. Since the landlord wanted to do repairs as the property was listed for sale.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Window replacement

I accept the evidence of both parties that the window in the basement was broken; however, neither party was able to explain how it broke. I am not satisfied that the window was broken by the neglect or the actions of the tenants. Therefore, I dismiss this portion of the landlord's claim.

Replace broken stair beam

I accept the stair beam was broken by the neglect or the action of the tenants' roommates when the tenants were away. I find the tenants breached the Act when they failed to repair the damage and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$200.00**.

Replacement of fridge crisper

I accept the evidence of both parties that the crisper was broken; however, as the crisper is made of plastic and was four years old at the time. I find it more likely than not that the crisper broke under reasonable use and is normal wear and tear. Therefore, I dismiss this portion of the landlord's claim.

Exterior cleaning

I accept the evidence of the landlord's agent that exterior deck was left dirty, cat litter and cigarettes butts had to be cleaned from the garden. This is supported by photographs. I find the tenants have breached the Act, when they failed to leave the deck clean and when they failed to remove cigarette butts and cat litter. I find the amount claimed by the landlord is reasonable. Therefore, I find the landlord is entitled to recover the amount of **\$57.50**.

Dump fee and garbage removal

In this case, the move-out inspection report the parties agreed the tenant left personal items behind in the amount of at least one cube van. I find if these items were from the deceased landlord the tenants should have noted that in the move-out condition inspection report.

Section 21 of the Act states a condition inspection report completed in accordance with this section 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.

I find the tenants have not provided a preponderance of evidence to the contrary. I find the tenants breached the Act when they failed to remove these items and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of the garbage removal and disposal in the amount of **\$429.18**.

Carpet replacement

I accept the tenants were responsible for carpet cleaning as that is stated in the move-out condition inspection and that amount was deducted from the security deposit; however, I am not satisfied on the evidence presented that the carpets needed to be replaced due to the neglect of the tenants.

The photographs provided by the landlord are black and white and of poor quality and as a result, I am unable to determine if the carpets were required to be replaced due to the neglect of the tenants. Therefore, I dismiss this portion of the landlord's claim.

May 2017 rent

I am not satisfied the landlord suffered any loss of rent for May 2017, due to the action of the tenants. No renter was scheduled to move-in to the premises when the tenants vacated. Further, the property was listed for sale at the time and was being shown to potential buyers. While it may have been shown to potential renters, I find it more likely than not that having the property listed for sale, impacted the landlord's ability to find a new renter. Therefore, I dismiss this portion of the landlord's claim.

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I find that the landlord has established a total monetary claim of **\$786.68** comprised of the above described amounts and the \$100.00 fee paid for this application. I grant the landlord an order under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order in the above noted 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 03, 2017

Residential Tenancy Branch