



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting to recover unpaid rent and /or utilities; for compensation for damage to the unit; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

The Tenants filed for a monetary order for money owed or compensation for damage or loss under the *Act*, and for the return of the security deposit and pet damage deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided 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 to me.

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 Tenant testified that he received disclosure of the Landlords evidence that is before me.

The Landlord testified that he received the Tenant's evidence; however, the USB data stick was blank. The Tenant testified that she did not contact the Landlord prior to the hearing to confirm the Landlord could view the files.

Residential Tenancy Branch Rule of Procedure 3.10.5 Confirmation of Access to Digital Evidence requires that the format of digital evidence must be accessible to all parties. A party providing digital evidence to another party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Since the Tenant failed to confirm that the Landlord could access the digital files, the evidence on the USB data stick will not be considered in this hearing.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to monetary relief for damage to the unit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement for overpayment of rent?
- Is the Tenant entitled to the return of the security deposit and pet damage deposit?

Background and Evidence

The Parties testified that the tenancy began on August 15, 2017, as a month to month tenancy. Rent in the amount of \$825.00 was due on the first day of the month. The Tenant paid the Landlord a security deposit of \$412.50 and a pet damage deposit of \$412.50. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants entered into a tenancy agreement on August 4, 2017, for a tenancy to start on August 15, 2017. The Tenants began moving into the rental unit, but changed their minds and had removed all their possessions by August 18, 2017.

The Landlord is claiming compensation for a loss of rent owing under the tenancy agreement and for damage to the rental unit. The Landlord makes the following claims:

August 2017, Rent	\$412.50
September 2017, Rent	\$825.00
Bathroom repairs (labour)	\$910.00
Bathroom repairs (materials)	\$393.78
Filing fee	\$100.00

Loss of Rent

The Landlord testified that the Tenants entered into a tenancy agreement to take possession of the rental unit on August 15, 2017, but then changed their mind about moving into the unit. The Landlord testified that the Tenants did not provide the proper notice to end a tenancy and the Landlord has suffered a loss of rent. The Landlord testified that the Tenants paid the rent due for August 2017.

The Landlord is seeking an additional \$825.00 because the Landlord was not able to rent the unit out for the month of September 2017. The Landlord testified that the rental unit underwent repairs for the month of September which affected her ability to rent the unit for September 2017.

In reply the Tenant testified that when they began to move into the unit they realized the condition and state of repair of the rental unit was very poor. The Tenant testified that they noticed bulging tiles in the bathroom shower and when they touched it a tile fell off. She testified that they did not purposely remove the tile, it simply fell off. The Tenants decided that the rental unit was not suitable and changed their mind about moving into the unit.

Bathroom Damage and Repairs

The Landlord testified that because the Tenants removed the tile in the bathroom the Landlord decided to fix the all the bathroom tiles. The Landlord is seeking \$910.00 for the cost of labour to install new drywall, tiles and re-grout the bathroom and \$393.78 for the cost of materials. Because of the construction, the Landlord did not attempt to re-rent the unit for September 2017.

In reply, the Tenant submitted that they disagree with the Landlords claim for the cost to repair/ renovate the bathroom. The Tenant submitted that the Landlord is responsible to maintain the unit and is responsible for these costs.

Security Deposit

On September 27, 2017, the Landlord submitted the application for dispute resolution seeking to keep the security deposit and pet damage deposit.

The Tenant testified that they did not provide the Landlord with their forwarding address in writing, but did send a text message requesting the return of the security deposit.

Tenants Application

The Tenants are seeking a monetary order in the amount of \$825.00 for the return of the security deposit and pet damage deposit. The Tenants are also seeking \$412.50 for the rent they paid for August 2017.

During the hearing the Tenant acknowledged that the Tenants are responsible to pay the rent for August 2017.

Analysis

Section 45 of the *Act* states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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

Landlords Claims

Loss of Rent

The rights and responsibilities of the parties under the *Act* began when the parties entered into the tenancy agreement on August 4, 2017. The Tenants did not have a legal right to end the tenancy without providing proper written notice to the Landlord. The Landlord was entitled to one full month's notice that the Tenants were ending the tenancy. Since the Tenants failed to provide the proper notice, the Landlord is entitled to recover the loss of rent up until the time the Tenants could have legally ended the tenancy. The earliest date that the Tenants could have ended the tenancy is September 30, 2017.

I award the Landlord compensation in the amount of \$825.00 for the loss of September 2017, rent.

Bathroom Damage and Repairs

Section 32 of the Act provides that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

The Landlords claims for the labour and material costs to repair the bathroom are dismissed. I accept the Tenants testimony that they simply touched a bathroom tile and it fell off. The Landlord has the responsibility to maintain the rental unit. I find that the Tenants are not responsible for the pre-existing poor state of repair and condition of the bathroom.

Tenants Claims

August 2017 Rent

During the hearing the Tenant conceded that the Tenants are responsible to pay the rent for August 2017. The Tenants claim for \$412.50 is dismissed.

Security Deposit

The Landlord was not required to return the security deposit and pet damage deposit to the Tenants or make a claim to keep the deposits, until the Tenants provided their forwarding address in writing. Since the Tenants did not provide their forwarding address in writing, the amount of the deposits does not double as a penalty to the Landlord.

The security deposit of \$412.50 and the pet damage deposit of \$412.50 will apply to any awards granted to the Landlord.

As to the recovery of the filing fees the parties paid for the Applications for dispute resolution, I find both parties were equally successful with their applications, and therefore, I do not award compensation for their filing fees.

The Landlord was successful with the claim for a loss of rent in the amount of \$825.00 for September 2017. I order that the Landlord can keep the security deposit and pet damage deposit of \$825.00 if full satisfaction of this award.

Conclusion

The Tenants failed to end the tenancy in accordance with the *Act*.

The Landlord is authorized to keep the security deposit and pet damage deposit in full satisfaction of the award of \$825.00 for the loss of September 2017, rent.

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: April 19, 2018

Residential Tenancy Branch