



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code , 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 and an order to retain the security deposit in partial satisfaction of the claim.

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.

Issues to be Decided

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 parties entered into a fixed term tenancy, which began on January 1, 2017 and was to expire on December 31, 2017. 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 July 31, 2017.

The landlord claims as follows:

a.	Landfill	\$ 155.00
b.	Paint	\$ 208.52
c.	Water damage repair (estimate)	\$ 7,775.25
d.	Loss of rent (September & October 2017)	\$ 2,500.00
e.	Filing fee	\$ 100.00
	Total claimed	\$10,790.75

Landfill

The landlord's agent testified that the tenants left garbage behind which had to be taken to the landfill. Filed in evidence are photographs. Filed in evidence are two receipts.

The tenant testified that they left a few bags of garbage behind. The tenant stated that all the garbage was in garbage bags and was neatly stacked when they vacated. The tenant stated that the photographs do not accurately reflect how they left the premises as it looks like the landlord purposely dump the garbage out of the bags.

Paint

The landlord's agent testified that the landlord had to purchase paint to repairs some of the walls. The landlord seeks to recover the amount of \$208.52.

The tenant testified that the only damage they caused to the wall was they had place a baby gate at the top of the stairs, which they did not repair.

Water damage and repair

The landlord's agent testified that when the tenants vacated the rental premises they cut the primary waterline to the dishwasher that was underneath the kitchen sink and this caused a flood in the rental unit. The agent stated that this went undetected until the morning of August 1, 2017.

The landlord's agent testified that the landlord was unable to claim this on their insurance because no one had been in the rental unit for a 24 hours period. The landlord seeks to recover the cost of \$7,775.25. Filed in evidence are photographs of the rental unit. Filed in evidence is an estimate for repair dated August 28, 2017.

The landlord's agent testified that the tenant also cracked the ensuite toilet and broke a door, which had to be replaced. Filed in evidence are photographs.

The tenant testified that they did not cut any waterline in the rental unit. The tenant stated that there was an earlier flood in the rental unit and the photographs appear to be from that flood.

The tenant testified that there was someone in the rental unit on the last day of their tenancy, as they had a company attend to pick up the furniture that they had rented. The tenant stated there was no water leak noted at that time.

The tenant testified that the landlord also contact the police about some missing items at the end of the tenancy, which they had a conversation with the police. The tenant stated that the police never mentioned anything about them allegedly cutting a waterline. The tenant stated the first time they heard of this issue was in the landlord's application.

The tenant acknowledged that they broke the door during the tenancy; however, they replace the door with a new door. The tenant stated they did no cause damage to the toilet.

The landlord's agent responded that the earlier flooding was cause by a broken exterior pipe and this did not cause any damage to the rental unit.

The landlord's agent responded that the door was replaced during the tenancy; however, it was with a flat panel door and not a paneled door.

The tenant responded that that is not correct as water entered the rental unit and the landlord never fixed the damage.

Loss of rent

The landlord's agent testified that the landlord seeks to recover loss of rent for September and October 2017 for breaching the lease agreement. The agent stated they are unsure why the landlord did not claim August 2017, rent.

The tenant testified that they gave the landlord proper notice to end tenancy by text message. The tenant stated that the landlord asked them to put their notice in the proper form, such as on paper. The tenant stated that this was unreasonable and they did not do so. The tenant stated that they are not responsible for any further rent as the landlord was preparing to sell the property.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Landfill

I accept the evidence of both parties that there was some garbage left behind, which appears to be minimal. However, I am not satisfied on the amount claimed. I have reviewed the two receipts filed in evidence both are dated August 8, 2017, and they indicated that there was 990 kg of material disposed. I find the evidence does not support that there was this excessive garbage left behind.

Further, this was unrelated to the flooding as that estimate provided on August 28, 2017, indicated that dispose of flood material is included.

Base on the above, I dismiss this portion of the landlord's claim.

Paint

In this case, the tenant acknowledged that they did not repair the wall where they had installed a baby gate. I find it was the tenants' responsibility to repair the damage to the wall. I find the tenants breach the Act. Therefore, I find the landlord is entitled to recover the cost of paint in the amount of \$207.52.

Water damage and repair

In this case, both parties have provided a different version of events. The evidence of the landlord's agent was the tenants cut the waterline in the rental unit causing a flood. The evidence of the tenant was that they did not cut any waterline and that the photographs provided were from an earlier flood. In this case the landlord has filed a photograph of water damage to the exterior of the house, this leads me to believe this was from the earlier flood as the landlord's agent indicated that the earlier flood was said to be contain to the exterior. I find it highly unlikely that this was caused by the waterline under the sink.

The evidence of the tenant was that they had their furniture removed on July 31, 2017 and there was no water leaking at that time. The evidence of the tenant was that they were contacted by the police about some missing items and the police never said anything to about them cutting any waterline.

I am not satisfied the tenants cut any waterline in the rental unit, as there was no reason to do so. Further, I find it highly unlikely that an insurance company would not cover damage when the rental unit was not vacant for any extended period of time and certainly no more than 24 hours.

While the landlord has submitted an estimate for repair, I am also not satisfied that the landlord actually paid this amount, as the contracting company was the landlord's father and no proof any payment was provided such as a cancelled cheque.

The tenant acknowledged that they broke the door during the tenancy and that it was replaced. While the landlord's agent stated the panelled door was replaced with a flat door, rather than the panelled door, I have no way to determine the difference in value as no receipt was provided. Further, I am not satisfied based on the contested evidence that the tenants cracked the toilet.

Based on the above, I find the landlord has failed to prove the damage was caused by the action or the neglect of the tenants. Therefore, I dismiss this portion of the landlord's claim.

Loss of September and October rent

I accept the tenants breached the Act, by ending their fixed term tenancy earlier than the Act allowed, as the earliest they could have legally ended the tenancy was December 31, 2017. The tenants were asked by the landlord to put that in the proper form. I find the tenants breached the Act.

However, in this case the landlord was not seeking compensation for August 2017, rent. No explanation was provided at the hearing.

In this case the landlord seeks compensation for September and October 2017; however, the landlord has provided no evidence that they mitigate the loss, such as trying to rent the rental unit. Further, the evidence supports that the landlord may have been preparing to have the property sold.

I find the landlord has not proved they did everything reasonable to mitigate the loss as required by section 7(2) of the Act. Therefore, I dismiss this portion of their claim.

I find that the landlord has established a total monetary claim of **\$308.52** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the above amount from the security deposit in full satisfaction of the claim and I grant the tenants an order under section 67 for the balance due of their security deposit in the amount of **\$316.48**.

Should the landlord fail to comply with my order, the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are granted a formal order for the balance due of their security deposit.

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 1, 2018

Residential Tenancy Branch