



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MND, MNR

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 compensation for damage or loss; 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 damage 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.

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 compensation under the Act or tenancy agreement?
- 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 September 21, 2012, as a month to month tenancy. Rent in the amount of \$933.00 was due to be paid by the first day of the month. The Tenant paid the Landlord a security deposit of \$450.00 and a pet damage deposit of \$450.00. Both parties provided a copy of the tenancy agreement.

Landlords Claims

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 | \$933.30 |
| August 2017, Locker Rent | \$30.00 |
| Carpet Cleaning | \$300.00 |
| Patio Door | \$40.00 |
| Light Bulbs | \$15.00 |
| Drywall Repair | \$100.00 |
| Kitchen Drawer | \$100.00 |
| Patio Blind | \$300.00 |
| Window Cleaning | \$200.00 |
| Range Hood | \$40.00 |
| Door Repair | \$100.00 |

August 2017, Rent \$933.30

The Landlord testified that the Tenant failed to pay the rent owing for the month of August 2017. The Landlord testified that on July 31, 2017, the Tenant provided written notice that she was ending the tenancy and she moved out in August 2017 but failed to pay the rent.

The Tenant submitted that she did not pay the rent for the month of August 2017. The Tenant believed that the Landlord was selling the unit and the Tenant believed that she was entitled to a month of free rent.

August 2017 Locker Rent \$30.00

The Landlord testified that the parties had an agreement for the Tenant to rent a locker for \$30.00 per month. The Landlord testified that the Tenant failed to pay the locker rent for the month of August 2017.

In reply, the Tenant submitted that she did not pay the locker rent for the month of August 2017.

Carpet Cleaning \$300.000

The Landlord is claiming \$300.00 for carpet cleaning. The Landlord testified that he did not have the carpets cleaned at the end of the tenancy. The Landlord estimated the cost of having the carpets cleaned.

In reply, the Tenant testified that she cleaned the carpets in the rental unit using a machine rented from a local business. She testified that she shampooed the carpets on August 17, 18, and 19, prior to moving out. She testified that the carpet stain shown in the Landlord's photograph was pre-existing when she moved into the rental unit.

Patio Door Screen \$40.00

The Landlord is claiming \$40.00 for replacement of a patio door screen. The Landlord testified that he did not have the screen replaced at the end of the tenancy. The Landlord estimated the cost of having the screen replaced.

In reply, the Tenant testified that the condition inspection report completed at the time of the move in shows the screen was already torn.

Light Bulbs \$15.00

The Landlord testified that he needed to replace light bulbs in the rental unit at the end of the tenancy. The Landlord is seeking \$15.00 for his costs.

In reply, the Tenant acknowledged that she removed some energy efficient light bulbs and took them with her at the end of the tenancy

Drywall Repair \$100.00

The Landlord is claiming \$100.00 for the cost to repair an indentation in the drywall. The Landlord testified that the wall needed mudding and sanding. The Landlord testified that he did not have the wall repaired at the end of the tenancy. The Landlord estimated the cost of having the wall repaired.

In reply, the Tenant testified that she does not recognize the damage and did not damage the wall.

Kitchen Drawer \$100.00

The Landlord is claiming \$100.00 for the repair of a kitchen drawer. The Landlord testified that he did not have the drawer repaired at the end of the tenancy. The Landlord estimated the cost of having the drawer repaired.

In reply, the Tenant testified that the drawer was broken when she moved into the unit. She testified that the Landlord failed to fix the drawer so the Tenants tried to glue it together a few times.

Patio Blind \$300.00

The Landlord is claiming \$300.00 for the cost to replace a patio blind. The Landlord testified that he did not have the blind replaced at the end of the tenancy. The Landlord estimated the cost of having the blind replaced.

In reply, the Tenant testified that the condition inspection report completed at the time of the move in shows that the patio blind is broken and missing. The Tenant testified that she did not remove them.

Window Cleaning \$200.00

The Landlord is claiming \$200.00 for the cost to clean the windows. The Landlord testified that he did not have the windows cleaned at the end of the tenancy. The Landlord estimated it would take 10 hours to have the windows cleaned.

In reply, the Tenant testified that she cleaned the windows and window tracks before moving out of the rental unit.

Range Hood Filter \$40.00

The Landlord is claiming \$40.00 for cleaning the range hood. The Landlord testified that he did not have the range hood cleaned at the end of the tenancy. The Landlord estimated the cost of having the range hood cleaned.

In reply, the Tenant testified that she oxy cleaned the range hood filter at the end of the tenancy. She pointed out that the Landlord has not provided any photographs showing an unclean range hood filter.

Door Repair \$100.00

The Landlord is claiming \$100.00 for removing a sign affixed by glue to a door. The Landlord testified that he did not have the sign removed. The Landlord estimated the cost of having the sign removed.

In reply, the Tenant testified that she found the sign and attached it to the door using double sided tape. She testified that she forgot to remove it at the end of the tenancy. She testified that it removes with warm water.

Security Deposit

On October 11, 2017, The Landlord applied to keep all or part the security deposit and pet damage deposit.

The Landlord testified that he did not receive a proper address for the Tenant until he received the Tenant's Notice of Hearing documents via registered mail that were received by the Landlord on September 26, 2017. The Landlord testified that the Tenant left a work address in the rental unit, but the employer refused to accept service of documents at the workplace.

The Landlord testified that the Tenant did not participate in a move out inspection. The Landlord testified that he attempted to arrange a move out inspection with the Tenant by sending emails to the Tenant on August 30, 2017 and September 1, 2017.

Tenants Claims

Stationary Cycle

The Tenant testified that the Landlord is responsible for damage to her stationary cycle that was in her storage locker. She testified that the Landlord told her to make a tunnel through her storage items, so the building strata could access water shut off valves. She testified that she informed the Landlord that many of her possessions were too large so the Landlord hired people to move her possessions to a new locker. The tenant testified that her possessions were roughly treated and the handle bars of the cycle were removed; the seat pipe was crushed; and the electronic monitor is smashed off. The Tenant provided a photograph of the cycle.

In reply, the Landlord testified that he hired movers to move the Tenants possessions.

Security Deposit and Pet Damage Deposit

The Tenant has applied for the return of the security deposit and pet damage deposit.

Analysis

Residential Tenancy Branch Policy Guideline # 16 Compensation for Damage or Loss is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

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

Security Deposit and Pet Damage Deposit.

I find that the Landlord did not receive a proper address for the Tenant until he received the Tenant's Notice of Hearing documents via registered mail that were deemed received by the Landlord on September 26, 2017.

The Landlord applied for dispute resolution making a claim for the security deposit and pet damage deposit on October 11, 2017. I find that the Landlords claim to keep the deposits was made within 15 days of receiving the Tenant's address.

I find that the Landlord could not offer the Tenant two opportunities to attend a move out inspection pursuant to section 35 of the *Act* and section 17 of the Residential Tenancy Regulation because the Landlord did not have the Tenants forwarding address to send notice in the approved form until September 26, 2017. The rental unit was sold on September 15, 2017.

I find that the security deposit of \$450.00 and the pet damage deposit of \$450.00 will apply to any monetary awards granted to the Landlord.

Landlords Claims

After careful consideration of the evidence submitted by the parties, and after considering Policy Guideline # 16, regarding loss and value of loss, I find there is insufficient evidence before me to conclude that the Tenant is responsible for most of the losses claimed by the Landlord.

The Condition Inspection Report provided by the Landlord indicates that a number of the Landlord's claims are for items that had pre-existing damage at the start of the tenancy. The report indicates the all the bedroom flooring had damage or stains. The report indicates the kitchen drawer was already damaged. The report indicates the blinds were broken/ missing.

Even if the Tenants had been found to be responsible for the losses claimed, I find further that there is insufficient evidence of the value of the alleged losses. The Landlord did not provide any written estimates from independent sources and the Landlord did not spend any money or time to replace, repair, or clean most of the items being claimed.

In addition, the Landlord testified he sold the rental property approximately 15 days after the Tenant moved out, and he did not provide any documents to support his testimony that he sold the property for less money due to the poor condition and state of repair of the rental unit. The Landlord provided insufficient evidence that he suffered a loss, and the following claims of the Landlord are dismissed.

| | |
|-------------------|----------|
| Carpet Cleaning | \$300.00 |
| Patio Door Screen | \$40.00 |
| Drywall Repair | \$100.00 |
| Kitchen Drawer | \$100.00 |
| Patio Blind | \$300.00 |
| Window Cleaning | \$200.00 |
| Range Hood | \$40.00 |
| Door Repair | \$100.00 |

Light Bulbs \$15.00

The Tenant acknowledged that she removed some energy efficient light bulbs and took them with her at the end of the tenancy. The Tenant is responsible to replace light bulbs in the unit at the end of a tenancy. I find that the Tenant is responsible for the replacement cost of the lightbulbs. I grant the Landlord the amount of \$15.00 for lightbulbs.

August 2017, Rent

The Tenant did not have the legal right to withhold payment of August 2017, rent. The Landlord had not issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property due to the sale of the rental property. The Tenant ended the tenancy by moving out before the Landlord sold the rental unit. The Tenant is responsible to pay the rent for August 2017.

I grant the Landlord the amount of \$933.30 for the loss of August 2017, rent.

August 2017 Storage fee

The Tenant did not have the right to withhold payment of the August 2017, storage fee. The Tenant is responsible to pay the storage fee for August 2017.

I grant the Landlord the amount of \$30.00 for the loss of the August 2017, storage fee.

Tenant's Claims

Locker Deposit

I find that the Tenant paid the Landlord a storage locker deposit of \$50.00. I order the Landlord to return the locker deposit of \$50.00 to the Tenant.

Stationary Cycle \$100.00

I find that the Landlord hired persons to remove the Tenant's possessions from her storage locker into another locker, and is responsible for any damage to the Tenants property. I accept the Tenant's testimony and photographic evidence that the stationary cycle was damaged. The Tenant did not provide a quote on the cost to repair the cycle or a receipt for the repair costs. I grant the Tenant a nominal award of \$50.00 for damage to the cycle.

Awards

The Landlord is awarded compensation in the amount of \$978.30.

The Tenant is awarded compensation in the amount of \$100.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As both parties had some success, I decline to order an award to recover the filing fees.

After setting off the Tenants award of \$100.00 against the Landlords award of \$978.30, I find that the Tenant owes the Landlord \$878.30.

I order that the Landlord can retain \$878.30 from the security deposit and pet damage deposit of \$900.00. I order the Landlord to return the balance of \$21.70 to the Tenant.

I grant the Tenant a monetary order in the amount of \$21.70. The order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Tenant failed to pay the rent and locker fee owing under the tenancy agreement for August 2017.

The Landlord established a monetary claim in the amount of \$978.30.

The Tenant established a monetary claim in the amount of \$100.00.

The Landlord is authorized to keep \$878.30 from the security deposit and pet damage deposit of in full satisfaction of his awards.

I order the Landlord to return the balance of \$21.70 from the deposits to the Tenant.

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 25, 2018

Residential Tenancy Branch