



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

On October 14, 2017, the Landlord submitted an Application for Dispute Resolution for a monetary order for damage to the unit; for compensation for damage of loss under the Act, Regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee.

On April 21, 2018, the Tenant submitted an Application for Dispute Resolution seeking the return of a security deposit.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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 Landlord's application includes monetary claims against the Tenant regarding two separate tenancy agreements. The Landlord rented two townhouse type units to the Tenant under separate agreements.

The Landlord did not submit an application to the Residential Tenancy Branch for approval to join the claims for the two separate tenancy disputes.

The Landlord requested to proceed with the hearing for her claims for unit #4 at the dispute address.

The Landlords request was granted and the hearing proceeded for the tenancy at unit #4 at the dispute address. The Landlord's application is amended to include unit #4 as the dispute address. The Landlord's claims for compensation against the Tenant for unit #5 at the dispute address are dismissed with leave to reapply.

The Tenants application for the return of a security deposit is limited to the tenancy at unit #4 of the dispute address. The Tenant has leave to reapply for the return of the any security deposit or other claims regarding the tenancy at unit #5.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to compensation for damage or loss under the Act?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The parties provided testimony regarding the terms of the tenancy. The tenancy for unit #4 began on July 1, 2017, as a fixed term tenancy to continue until August 15, 2017, with an option to continue as a month to month tenancy until December 15, 2017. The Tenant is to pay the Landlord monthly rent in the amount of \$1,500.00. The Tenant paid the Landlord a security deposit of \$750.00. The rental unit was fully furnished.

The Landlord testified that she purchased the rental unit on May 26, 2017, for use as a vacation rental. The unit is a three bedroom and two bathroom unit. The parties testified that they entered into a short term tenancy agreement for the Tenant to use the unit as accommodation for his work crews who were working in the area.

I find that the Act applies to this tenancy arrangement because it was rented as living accommodation and was not occupied as vacation or travel accommodation.

The Landlord testified that cable and internet was included in the rent; however, utilities were not. The Landlord testified that the addendum to the tenancy agreement provides that the Tenant is responsible for paying the cost of utilities.

The Tenant submitted that the utilities of water and electricity were included in the rent.

The parties testified that the tenancy agreement is in writing and both parties had a copy of the agreement. The Landlord faxed a copy of the tenancy agreement to the Residential Tenancy Branch immediately following the hearing.

The parties testified that the Tenant vacated the rental unit in the middle of September 2017.

The Landlord is seeking compensation for the following items:

Carpet Cleaning	Unit 4	\$374.50
Cleaning	Unit 4	\$480.00
Pressure washing	Unit 4	\$128.40
Blinds	Unit 4	\$402.60
Chairs	Unit 4	\$345.00
Coffee maker	Unit 4	\$28.75
Bedding	Unit 4	\$694.49
Utility bills	Unit 4	\$209.93
Gas costs	Unit 4	\$250.00
Labour costs	Unit 4	\$1,920.00

The Landlord testified that she did not conduct an inspection of the rental unit with the Tenant at the start of the tenancy.

Security Deposit

The Landlord is requesting to retain the security deposit of \$750.00 in partial satisfaction of her claims.

Carpet Cleaning

The Landlord testified that the tenancy agreement addendum provides that the carpets are to be cleaned upon move out. She submitted if the Tenants do not clean the carpet the Landlord arranges for the cleaning and sends the invoice to the Tenant for payment.

The Landlord testified that the carpets were left dirty due to the occupants wearing their dirty work boots in the unit. The Landlord testified that there was mud and dirt on the carpets. The Landlord testified that she inspected the unit and had asked them to remove their boots.

The Landlord testified that she had the carpets cleaned at a cost of \$374.50.

In response, the tenant testified that they cleaned the carpets at the end of the tenancy using a vacuum cleaner.

Cleaning

The Landlord is seeking to recover the amount of \$480.00 she paid to have the rental unit cleaned after the Tenant vacated.

The Landlord testified that the entire rental unit was left dirty and it took two cleaners 8 hours each at a cost of \$30.00 per hour to clean the unit and the deck.

In reply, the Tenant testified that he does not agree with the Landlords claim because the rental unit was left clean.

Pressure Washing

The Landlord testified that the tenant is responsible for the cost to power wash the driveway. The Landlord testified that one of the occupants vehicle leaked oil on the driveway and the property strata board asked her to have it cleaned. The Landlord testified that she hired someone to pressure wash the driveway at a cost of \$128.40.

In reply, the Tenant acknowledged that there was an oil stain on the driveway. He testified that oil stains are hard to remove and he tried to remove it using detergent and water. The Tenant questioned whether or not the Landlord tried to remove the stain.

Blinds

The Landlord testified that the Tenant is responsible for damage to the blinds in the living room and master bedroom. She testified that the blinds were custom made approximately 8 years prior. The Landlord provided a quote for the replacement cost of the blinds which she submitted are the same quality as the existing blinds.

In reply, the Tenant testified that he is not responsible for the damage to the blinds. The Tenant pointed out that the Landlord failed to conduct an inspection of the rental unit at the start of the tenancy.

Chairs

The Landlord testified that she found three or four dining room chairs ripped and sun damaged. She submitted that the occupants moved the chairs outside on the deck.

She testified that the chairs are approximately 10 years old. She testified that she has purchased a new table and chairs for the unit while the chairs are being recovered.

The Tenant testified that to his knowledge the occupants did not take the chairs outside.

Coffee Maker

The Landlord testified that a coffee maker that came with the unit when she purchased it was found damaged. She testified that it was not useable. The Landlord is seeking \$28.75 for the replacement cost of a coffee maker. The Landlord did not provide a receipt for the purchase of a replacement coffee maker.

The Tenant provided no response to the claim.

Bedding

The Landlord testified that she purchased new linen and bedding for the use in the rental unit after purchasing the unit on May 26, 2017. The Landlord testified that the rental unit was never rented out prior to this tenancy. The Landlord provided a photograph of a stained sheet. The Landlord is to recover the cost of \$694.49 for replacing the bedding. The Landlord provided a receipt showing the purchase cost of the bedding as an example for the cost of replacement.

In reply, the Tenant testified that the bedding was old when they moved in.

Utility Bills

The Landlord testified that she received three utility bills and sent them to the Tenant for payment. The Landlord testified that the Tenant paid utility bills she provided earlier during the tenancy, the Tenant did not pay the amount owing on these three utility bills. The Landlord provided a utility bill for hydro in the amount of \$102.61 and two utility bills for water, sewer and gas in the amounts of \$69.48 and \$37.48.

In reply, the Tenant testified that he understood that he is only required to pay for items not included in the tenancy agreement. He submitted that he did not pay these utility costs because he was not sure he is responsible to pay them.

Gas Costs

The Landlord is seeking to recover her gas costs for driving her vehicle to the rental unit deal with the issues at the end of the tenancy. The Landlord did not provide a receipt.

I dismiss the Landlord's claim to recover her gas costs. I find that the Landlords costs for driving to the rental unit are her costs for doing business as a Landlord.

Labour Costs

The Landlord amended her claim at the hearing to reduce the amount of compensation she is seeking from the Tenant to be \$720.00. The Landlord testified that she spent 6 hours at \$120.00 per hour to deal with removing sheets and furniture; for additional cleaning, and running errands.

The Tenant submitted that the Landlord is changing her claim and her story and that her claims are hogwash and embarrassing.

Tenants Claim

The Tenant applied for the return of the security deposit in the amount of \$750.00.

Analysis

Sections 23 and 35 of the Act state that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 21 of the Residential Tenancy Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with

respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

Residential Tenancy Branch Policy Guideline # 5 Duty to Minimize Loss is intended to help the parties to an application understand issues that are likely to be relevant. The guideline provides:

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service.

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

Security Deposit

I find that the Landlord failed to perform a move in and move out inspection with the Tenant as required by the Act. The Landlord has extinguished her right to apply to keep the security deposit. The Tenant is entitled to the return of the security deposit of \$750.00.

Landlord's Claims

Despite having extinguished her right to apply to keep the security deposit, the Landlord retains the right to apply for compensation for damage. The Landlord has testified about damage and cleaning but has provided very little documentary evidence in

support of her testimony. I find there is insufficient evidence to establish the condition of the rental unit, at the time the Tenant moved in, and after the Tenant and occupants moved out. The security deposit will be used to set off any awards granted to the Landlord.

Carpet Cleaning

I find that the parties signed a tenancy agreement addendum that requires the carpets to be cleaned upon move out. I find that simply vacuuming the carpet does not meet the term of the agreement that requires the carpets be cleaned.

I find that the Landlord's claim is reasonable for having the carpets in a 3 bedroom townhouse cleaned. I grant the Landlord the amount of \$374.50 for the cost of having the carpets cleaned.

Cleaning Costs

The Landlord's claim for cleaning costs is dismissed. The Tenant testified that the rental unit was left clean. The Landlord did not conduct a move in inspection and prepare a report, and did not submit any photographic evidence showing the condition and state of repair of the rental unit at the end of the tenancy in support of her testimony.

When two parties provide equally believable but opposing testimony, the burden of proof rests with the applicant. The Landlord provided insufficient evidence that the rental unit was left unclean.

Pressure Washing

The Tenant acknowledged responsibility for the oil stain on the driveway. The Landlord did not provide a receipt for having the driveway pressure washed.

I find that the Tenant is responsible for the stain on the driveway. I find that the Landlord is entitled to compensation; however establishing the value of loss is not straightforward since there is no receipt.

I grant the Landlord a nominal monetary award of \$60.00 for costs associated with the removal of the oil stain in the driveway.

Blinds

The Landlord's claim for the replacement cost of the blinds is dismissed. The Tenant testified that he is not responsible for the damage to the blinds. The Landlord did not conduct proper inspections and prepare a report and did not submit any photographic evidence showing damage to the blinds at the end of the tenancy.

The Landlord provided insufficient evidence that the Tenant is responsible for damage to the blinds.

Chairs

The Landlord's claim for the cost to cover the 10 years old chairs is dismissed. The Tenant refuted that the chairs were taken outside. The Landlord did not conduct proper inspections and prepare a report and did not submit any photographic evidence showing the condition of the chairs at the start and end of the tenancy.

The Landlord provided insufficient evidence that the Tenant is responsible for damage to the chairs.

Coffee Maker

The Landlord's claim for the cost of purchasing a coffee maker is dismissed. The Landlord did not conduct inspection reports did not submit any photographic evidence showing the condition of the appliance at the start and end of the tenancy.

The Landlord provided insufficient evidence that the Tenant is responsible for intentional or neglectful damage to the coffee maker.

Bedding

The Landlord provided a photograph showing that a sheet was left damaged/ stained. The Landlord did not provide a receipt showing the date of purchase for the bedding and did not provide a receipt for the replacement cost of the sheet; but did provide a receipt for the purchase of similar sheets she used in other units. I accept the Landlord's evidence that the sheet was damaged by an occupant and that the Tenant is responsible for the replacement cost of the sheet.

I grant the Landlord the amount of \$29.99 for the replacement cost of the sheet.

The remainder of the Landlord's claim is dismissed due to insufficient evidence of damage to bedding/ sheets in the rental unit.

Utility Bills

I find that the addendum to the tenancy agreement includes a term that indicates the Tenant is responsible for paying the cost of utilities. I find that the addendum contains a signature from the Tenant agreeing to the terms of the agreement by paying the amount of the utility bills using e-transfer.

I find that the Tenant is responsible to pay the utility bills and failed to pay the utility bills in the amount of \$209.93.

I grant the Landlord the amount of \$209.93 for the unpaid utility bills.

Gas Costs

I dismiss the Landlord's claim to recover her vehicle gas costs. I find that the Landlord's costs for driving to the rental unit are her costs for doing business as a Landlord and are not recoverable from the Tenant.

Labour Costs

The Landlord's claim for her labour costs is dismissed. The Landlords claim of \$120.00 per hour is not reasonable. In addition, aside from partial success on a bedding claim, the Landlord was not successful with any of her claims that form the basis of her labour costs.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties had some success with their claims, I decline to award either party the fee for making the application for dispute resolution.

The Landlord has established a monetary claim in the amount of \$674.42 for damage and cleaning costs. I order that the Landlord can retain the amount of \$674.42 from the security deposit of \$750.00. I order the Landlord to return the balance of \$75.58 to the Tenant. I grant the Tenant a monetary order in the amount of \$75.58. In order to enforce the order, the monetary order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Landlord failed to conduct a move in inspection of the unit with the Tenant at the start of the tenancy and has extinguished the right to make an application to keep the security deposit. The Tenant is granted the return of the \$750.00 security deposit.

The Landlord has established a monetary claim in the amount of \$674.42 for damage and cleaning costs. I order that the Landlord can retain the amount of \$674.42 from the security deposit of \$750.00. I order the Landlord to return the balance of \$75.58 to the Tenant. I grant the Tenant a monetary order in the amount of \$75.58. In order to enforce the order, the monetary order must be served on the Landlord and may be enforced in the Provincial Court.

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: May 21, 2018

Residential Tenancy Branch