



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 was a cross-application hearing for Dispute Resolution under the Residential Tenancy Act (“the Act”). The matter was set for a conference call hearing.

The Landlords applied for a monetary order for unpaid rent and damage to the rental unit; and to keep all or part of a security deposit, and to recover the cost of the application fee.

The Tenants applied for the return of the security deposit and for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the evidence 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

At the start of the hearing the Tenants withdrew part of their claim. The Tenants withdrew their claim for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement. The Tenants are only proceeding with their request for the return of the security deposit.

With respect to the disclosure of documentary evidence, the Landlords submitted that they received the Tenants' documentary evidence on April 26, 2018, which they submitted is not within two weeks of the hearing.

The Residential Tenancy Branch Rules of Procedure require that an applicant's evidence must be received by the other party not less than 14 days before the hearing.

The Landlords confirmed that they had an opportunity to consider and respond to the evidence. They submitted that they would not have responded to the evidence.

I find that the Landlord received the Tenants' documentary evidence 14 days prior to the hearing and that proceeding with the hearing and admitting the Tenants' evidence presents no prejudice to the Landlords. The hearing proceeded and the Tenants' evidence was accepted.

Issues to be Decided

- Are the Landlords entitled to compensation due to damage and the cost of cleaning the rental unit?
- Are the Landlords entitled to compensation for unpaid rent?
- Can the Landlords retain the security deposit in partial satisfaction of the claim?
- Are the Tenants entitled to the return of the security deposit?

Background and Evidence

The parties testified that the tenancy began on July 1, 2016, on a month to month basis. Rent in the amount of \$1,866.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid a security deposit of \$900.00 to the Landlord.

The Tenants testified that they moved out of the rental unit on October 1, 2017.

Tenant's Application

The Tenants are seeking the return of the \$900.00 security deposit. The Tenants testified that they provided their forwarding address in writing to the Landlord on October 1, 2017. The Tenants referred to the condition inspection report completed on October 1, 2017, which contains their forwarding address.

The Tenants submitted that they offered to settle the matter by agreeing to allow the Landlord to retain \$300.00; however, the Landlord did not accept.

Landlord's Application

The Landlords' Application indicates the Landlord is claiming \$1,032.14 for cleaning costs and damage to the rental unit. The Landlord is requesting a monetary order for the following items, and is asking to retain the security deposit in partial satisfaction of their claims.

Rent for October 2017	\$60.19
Paint and Supplies	\$79.83
Cleaning Costs	\$365.00
Christmas Lights	\$56.99
Excavator Rental	\$265.39
Carpet Cleaning	\$103.95
Soil	\$101.78
total	\$1,033.13

Rent for October 2017

The Landlords testified that they served the Tenants with a notice to end tenancy with an effective date of October 1, 2017. The Landlords testified that the Tenants vacated the rental unit at 1:00 pm on October 1, 2017, after participating in the move out inspection. The Landlord is seeking \$60.19 for 1 day of rent.

The Tenants advocate submitted that the Tenants do not agree with Landlords' claim for one day of rent for October 2017.

Paint and Supplies

The Landlord is seeking to recover \$64.95 for the cost of paint and \$14.88 for the cost of filler to repair chips and holes in walls and baseboards throughout the rental unit. The Landlord testified that the Tenants painted the second bedroom the color of fuchsia pink without permission from the Landlord. The Landlord submitted photographs showing chips in the baseboards and damage to doors and railings.

In reply, the Tenants testified that they agree to pay the amount claimed of \$64.95 for paint. The Tenants testified that they filled all holes that were larger than pinholes prior to moving out of the rental unit.

Cleaning Costs

The Landlord testified that the Tenants left the rental unit unclean at the end of the tenancy. The Landlord testified that they hired two cleaners at \$35.00 per hour to clean

the rental unit. The Landlords testified that the cleaners vacuumed and cleaned the walls and baseboards within the unit. The Landlord testified that the cleaners cleaned the kitchen fridge, stove, and dishwasher.

The Landlord provided a detailed invoice that documents the cleaning that was completed. The Landlords provided photographs of the rental unit showing the state of cleanliness of the unit that they submit were taken on October 1, 2017, at the time of the move out inspection.

A copy of the condition inspection report completed at the end of the tenancy indicates that the washer, dryer, dishwasher and refrigerator were left unclean.

The Landlord is seeking to recover the amount of \$365.00 for the cost of having the rental unit cleaned.

In reply, the Tenants submitted that the Landlords' claim is punitive and the Landlords' standard of cleanliness is unreasonable. The Tenants submitted that the Landlords spent 90 minutes conducting the move out inspection.

The Tenants submit that the Landlords' documentary evidence is not supportive of their claims.

The Tenants testified that they spent more than 20 hours cleaning the rental unit prior to moving out and that many of the items that the Landlord is claiming are items that the Tenants had previously cleaned.

The Tenants submitted that the stove was not on wheels, so they did not pull it out and clean behind it. The Tenants acknowledged that they did not clean the air ducts or the fireplace cover.

The Tenants submitted that they may have missed a few items when they cleaned the rental unit and they are in agreement to pay the Landlord \$70.00 for cleaning costs.

Christmas Lights

The Landlords submitted that the Tenants removed some Christmas lights and took them when they moved out of the unit. The Landlord is seeking compensation of \$56.99 for the replacement cost of the Christmas lights. The Landlords provided a receipt for the purchase of the lights.

In reply, the Tenants testified that they took the lights down and when they moved out one of their helpers believed they belonged to the Tenants and took them. The Tenants submitted that the Landlords accused them of stealing the lights.

Excavator Rental and Soil Cost

The Landlord is seeking to recover \$265.39 for the cost of renting an excavator to dig up buried wood and debris in the garden. The Landlord submitted that they noticed that the Tenants had buried logs and debris under the soil. The Landlord testified that the Tenants removed the soil they had provided them for use in the garden. The Landlord testified that they dug up the debris and hauled in three yards of topsoil at a cost of \$101.78

The Landlords submitted that the logs and debris were used to as filler after removing the soil to intentionally keep the appearance of the soil level the same.

The Landlords provided photographs of the yard and receipts for the excavator rental and the cost of the topsoil.

In reply, the Tenants testified that they were given permission to use the garden area and they built up seven garden beds using soil they received from a friend and soil they purchased. The Tenants testified that three of the garden beds were built using soil provided by the Landlord.

The Tenants testified that they removed the soil they had purchased from a couple of the beds when they moved off the property. They submitted that they flattened out the garden soil. They submitted that they did not bring any branches onto the property but did bury some sticks and wood into a trench to assist with drainage of water coming from a pasture. They submitted that after they moved out the Landlords decided to change the purpose of the vegetable garden and landscaped the area.

Carpet Cleaning

The Landlords are seeking \$103.95 for the cost of steam cleaning the carpets.

The Tenants acknowledged that they did not steam clean the carpets before moving out and they accepted responsibility to pay the \$103.95 cost for carpet cleaning.

Security Deposit

The Tenants moved out of the rental unit on October 1, 2017, and provided their forwarding address to the Landlords in writing on October 1, 2017.

The Landlords applied for dispute resolution on October 10, 2017, seeking to retain the security deposit in full or partial satisfaction of their claims.

Analysis

Landlords' Claims

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

Rent for October 2017

I dismiss the Landlords claim for one day of rent for October 2017. The Tenants did not occupy the rental unit for the entire day, and the Landlord did not suffer a loss of any rental income.

Paint and Supplies

I find that the Tenants are responsible for the cost of the paint. I award the Landlords the amount of \$64.95 and \$14.88 for filler. The Landlords photographic evidence supports their testimony that baseboards, railings, and doors needed some repair.

Cleaning Costs

While I acknowledge the Tenants' submission that the stove was not on wheels and therefore they were not required to clean behind it, I find that the Landlord has provided the stronger evidence that the rental unit was left unclean. The Landlords' photographic evidence is supported by the condition inspection report. I find that areas of the rental unit were left unclean. The Tenants did not provide any photographic evidence to support their testimony that the unit was left clean at the end of the tenancy.

I grant the Landlords the amount of \$365.00 for cleaning costs.

Christmas Lights

I find that the Tenants inadvertently took the Landlords Christmas lights and are responsible to pay the replacement cost of \$56.99.

Excavator Rental and Soil

The Landlords claim for the cost of the excavator and soil are dismissed. There is insufficient evidence that the Tenants are responsible for the cost to excavate the area and remove the branches and wood. The Tenants testified that they did not bring any branches onto the property and that they only buried some existing sticks into one trench. I find that the Landlords' photographs show a very large amount of wood/branches that were dug up from underground that may have already been present prior to the tenancy. In addition, there is insufficient evidence from the Landlord to establish that the Tennats removed soil that belonged to the Landlord.

Carpet Cleaning

I find that the Tenants are responsible to pay for the cleaning of the carpets. I grant the Landlord the amount of \$103.95 for the cost to have the carpets cleaned.

Security Deposit

I find that the Landlords made application for dispute resolution seeking to keep the security deposit within 15 days of receiving the Tenants' forwarding address. The Landlords' claim against the deposit was made in accordance with section 38 of the Act.

I find that the security deposit of \$900.00 will apply to set off any awards granted to the Landlord.

The Landlord is awarded a total amount of \$605.77

I authorize the Landlords to retain the amount of \$605.77 from the security deposit of \$900.00. I order the Landlords to return the balance of \$294.23 to the Tenants.

I grant the Tenants a monetary order in the amount of \$294.23. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I decline to order either party to pay the other for the cost of the filing fees for this hearing.

Conclusion

The Landlord applied to keep the security deposit in accordance with the Act.

The Landlord established a monetary claim of \$605.77 for damage and cleaning costs.

The Landlord is authorized to retain the amount of \$605.77 from the security deposit of \$900.00. I order the Landlords to return the balance of \$294.23 to the Tenants.

The Tenants are granted a monetary order in the amount of \$294.23.

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: June 7, 2018

Residential Tenancy Branch