



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD

Introduction

On November 23, 2017, The Landlord applied for dispute resolution under the *Residential Tenancy Act* ("the Act") requesting a monetary order for damage to the unit; a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The matter was scheduled as a teleconference hearing. 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.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Can the Landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties testified that the tenancy commenced on August 1, 2013, on a month to month basis. Rent in the amount of \$1,800.00 was due by the first day of each month. The Tenants paid a security deposit of \$900.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement.

The Tenants testified that they also paid a pet damage deposit to the Landlord on November 14, 2018, in cash. The Landlord responded that he has no recollection of this payment.

The parties agreed that the tenancy ended on November 1, 2017.

The Landlord's Application indicates the Landlord is seeking compensation in the amount of \$1,978.39 for the following items:

Late Fees for 48 months	\$1,200.00
Damage to appliances	\$100.00
Backyard Cleanup	\$28.00
Carpet damage (master)	\$198.66
Kitchen floor (upper)	\$238.26
Kitchen floor (lower)	\$163.47
Damage to walls	\$50.00
total	\$1,978.39

Late Rent Fees

The Landlord testified that there is term in the tenancy agreement that requires the Tenants to pay a \$25.00 fee for late payments of rent. The Landlord is seeking 48 months of late rent fees. The Landlord testified that the rent was paid on time only once during the tenancy. The Landlord testified that he spoke to the Tenants many times about the late rent payments. He testified that he reminded the Tenants to pay the rent on time every few months. The Landlord testified that he never put his concern in writing to the Tenants.

The Landlord testified that the Tenants refused to pay the late fees and it was not worth the headache to pursue it. The Landlord testified that the Landlord came each month to collect the rent from the Tenants.

In response to the Landlord's testimony the Tenant submitted that the Landlord never mentioned the late rent payment fees other than on one occasion. The Tenant testified that the Landlord agreed that the Tenant could change the date when the rent was due to be the 5th day of the month. The Tenants referred to a text message they sent to the Landlord explaining that the Tenant had started a new job with a different payroll schedule. The Tenant submitted that the Landlord stated that a late fee would be charged if the rent was more than 10 days late.

The Tenant submitted that the Landlord came to rental property each month to collect the rent. The Tenant submitted that the Landlord would often not show up on the 5th day of the month. The Tenant testified that the Landlord showed up at his convenience often days after the rent was due.

The Tenant testified that the Landlords have only provided six receipts for payment of the rent. The Tenants provided a copy of the receipts. The Tenant submitted that the Landlords did not put the day of the month in the receipts. The Tenant submitted that the Landlord never communicated to them that the rent had been paid late. In support of this, the Tenants referred to the rent receipt for May 2014, in the amount of \$1,680.00. The Tenants submitted that they mowed the lawn for the Landlord and were authorized to deduct \$120.00 off the rent. The Tenant submitted that the Landlord did not attempt to apply the late fees. The Tenant submitted that the Landlords acceptance of less rent is inconsistent with the Landlords testimony that he was making efforts to get them to pay late rent fees.

The Tenant referred to other text messages where they asked the Landlord when he is coming to collect the rent. The Landlord stated on August 7, 2015, that his son was coming to collect the rent.

The Tenant referred to another text message they sent to the Landlord on October 12, 2017, when the Landlord did not pick up the rent on the designated date.

The Tenant pointed out that the Landlord never made any mention of late rent payment fees in the text messages and did not pursue payment of late fees.

Damage to Appliances

The Landlord testified that the fridge and stove were neglected by the Tenants. The Landlord provided photographs that show mold growth in a fridge. The Landlord is seeking \$25.00 for each appliance that needed cleaning. The Landlord provided two photographs of an unclean refrigerator.

In reply, the Tenant testified that the fridge was leaking at the start of the tenancy. The Tenant testified that the Landlord allowed them to use their own fridge and permitted them to put the leaking fridge outside. The Submitted that the Landlord said “do

whatever you want with it”. The Tenant testified that they put it in the yard under a ledge and the Landlord left it there for four years and chose to not pick it up. The Tenant submitted that the Landlord knew the fridge was faulty.

In reply, The Landlord testified that there was never any conversation with the Tenant regarding the fridge.

Backyard Cleanup

The Landlord testified that the Tenants left some garbage behind in the backyard. The Landlord submitted that there was a tyre, plastic pool pieces, rotten wood and debris left in the yard. The Landlord is seeking \$28.00 for the cost of garbage bags and labor to clean up the yard and dispose of the garbage. The Landlord submitted that the Tenant is responsible to maintain the yard. The Landlord provided seven photographs of the yard.

In reply, the Tenant testified that they never left anything behind in the yard. They submitted that the Landlord never mentioned any issue about the yard at the time of inspection.

Carpet Damage

The Landlord testified that the Tenants are responsible for damage to the master bedroom carpet. He testified that there are burn marks and stretch marks. The Landlord testified that the carpet is approximately 6 – 8 years old. The Landlord has not replaced the carpet. The Landlord testified that the carpet cost \$650.00 new and has a value of \$198.66 based on its useful life. The Landlord did not provide any photographs showing the damage to the master bedroom carpet.

In reply, the Tenant testified that the carpet was not new at the start of their tenancy. They submitted that the carpet was in ok condition when they moved in but was wrinkled. The Tenant submitted that they did not do any damage to the master bedroom carpet. They submitted that they had put a plastic roll cover over the carpet to protect it. They submitted that the condition of the carpet is just normal wear and tear. The Tenant provided a photograph of the carpet.

Kitchen Floors (upper and lower)

The Landlord testified that the kitchen floor has vinyl tiles that were brand new at the start of the tenancy. The Landlord testified that the upper floor cost \$780.00 new and the lower floor cost \$530.00 new. The Landlord submitted that the floors are damaged. The Landlord testified that there is grease on the floors and the tiles are shifted. The Landlord provided two photographs showing the upper kitchen floor and two photographs showing the lower kitchen floor at the end of the tenancy.

In reply, the Tenant referred to a digital video recording they made at the end of the tenancy which they submit shows no damage to the floor. The Tenant testified that they are not responsible for any damage to the kitchen floors.

The Landlord replied that the Tenant's video evidence of the kitchen shows black goo on the floor at the 7 second time mark.

Damage to Walls

The Landlord testified that the walls were damaged by the Tenants' pet. The Landlord testified that walls have chew marks. The Landlord referred to their documentary evidence of photographs showing damage to the walls. The Landlord testified that they purchased filler material to repair the chewed areas. The Landlord is seeking \$50.00 for the material and labor to repair the chewed areas.

In reply, the Tenant submitted that the chewed areas are from rodents and not dog damage. The Tenant referred to her documentary evidence which she submits shows rodent holes.

Security Deposit and Pet Damage Deposit

The Landlord testified that he received the Tenants' forwarding address on November 14, 2017. The Landlord applied for dispute resolution claiming against the security deposit and pet damage deposit on November 23, 2017.

The Tenant testified that they provided their forwarding address to the Landlord on November 1, 2017.

The Tenant testified that the Landlord failed to conduct a move out inspection with them at the end of the tenancy. The Tenant submitted that the Landlord did not send a text message or call to arrange a time for a move out inspection. The Tenant testified that she sent a message to the Landlord inquiring about an inspection.

With respect to the payment of a pet damage deposit, The Tenant submitted that they paid a pet damage deposit to the Landlord on November 14, 2018, in cash. The Tenant pointed out that the Landlord's own documentary evidence shows that they received the pet damage deposit as they included a claim against the \$400.00 pet damage deposit.

In reply, the Landlord acknowledged that he did not complete a check list with the Tenants at the end of the tenancy. He submitted that they Landlord had attempted to schedule a time for a move out inspection with the Tenants.

The Tenant submitted that they attempted to settle the matter prior to the hearing, just for the sake of avoiding all the stress; however, they submit that the Landlord got angry and threatening and would not agree to cancel the dispute.

Analysis

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.

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

Late Rent Fees

Section 7 of the Act states if a Landlord or Tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results. A Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The Residential Tenancy Policy Guideline #2 Duty to Minimize Loss provides information to Landlords and Tenants on the duty to mitigate.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation. 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.

I find that the tenancy agreement permits a late rental payment charge of \$25.00 per month.

I am mindful that the Tenants lived in the rental unit for more than four years. I find that over the four year period of the tenancy the Landlord did not take adequate steps to address or enforce the term of the tenancy agreement that permits the charge of a late rent fee. The Landlord acknowledged that he collected the rent and stated that it was not worth the headache to pursue it, and he never addressed the issue in writing. I also find that there were occasions where the Landlord showed up to collect rent after the date the rent was due. The Landlord did not provide any evidence that he suffered any loss due to late payments of rent.

I find that the Landlord made little effort to reduce or prevent the loss they are claiming. I find that the Landlord is estopped from claiming the loss due to a failure to address and pursue the matter.

The Landlord's monetary claim to recover 48 months of late rent fees is dismissed.

Damage to Appliances

I award the Landlord \$25.00 for the cost of cleaning a fridge. There is insufficient evidence from the Tenant to prove that the Landlord authorized them to move the fridge outside. The Tenant testified that they left the fridge door closed for the four years.

The remainder of the Landlord's claim for the cleaning of appliances is dismissed. The Landlord did not provide any testimony or sufficient proof that other appliances required cleaning or were damaged.

Backyard Cleanup

I award the Landlord \$28.00 for the cost of cleaning the backyard at the end of the tenancy. I find that the Landlord provided the stronger evidence that the Tenant left garbage in the yard at the end of the tenancy.

Carpet Damage

I find there is insufficient evidence from the Landlord that the Tenants damaged the carpet in the master bedroom beyond normal wear and tear. The Landlord failed to perform a move out inspection and complete an inspection report. The Landlord did not provide photographic evidence of damage to the master bedroom. The Tenants provided the stronger evidence that the carpet was not damaged.

The Landlord's claim for \$198.66 for replacement of the carpet is dismissed.

Kitchen Floors

I find that the documentary evidence establishes that the kitchen floor had some type of residue or staining at the end of the tenancy. I find that the vinyl tiles were over four years old at the end of the tenancy. I find that the Tenant is responsible for the residue or staining; however, I find that the Landlord has not established that the Tenants are responsible by deliberate actions or neglect which caused the shifting of the tiles. I find that the tiles may have shifted due to normal use.

I find that the Landlord is entitled to recover a reasonable amount of compensation for the cost of cleaning the black grease or stains from the tiles.

I grant the Landlord the amount of \$200.00 for the cost of removing stains and cleaning the residue left on the kitchen floors.

Damage to Walls

I find that the Tenant is responsible for the Landlords cost to repair marks or gouges on the walls. The video evidence shows damage to the base of walls. The Tenants allege that the marks were caused by rodents, but they provided insufficient evidence to support this suggestion. There is no evidence before me that the Tenants reported the wall damage to the Landlord during the tenancy. I find that the Tenant is responsible for the damage.

I grant the Landlord the amount of \$50.00.

Security Deposit

Residential Tenancy Regulation provides that the right of a Landlord to file a claim against a security deposit for damage to the rental unit is extinguished if the Landlord does not offer the Tenant at least two opportunities for inspection, or having made an inspection does not complete the condition inspection report in the form required by the Regulation, or provide the Tenant with a copy of it.

I find that the Landlord failed to perform a move out inspection and provide the Tenant with a copy of a condition inspection report.

Pursuant to section 36 of the Act, I find that the Landlord's right to claim against the deposit was extinguished. When the Landlord failed to conduct an inspection at the end of the tenancy he extinguished his right to claim against the deposit for damages.

When the Landlord received the Tenant's written forwarding address, the Landlord was required to return the deposit, in full within 15 days.

I accept the Tenant's testimony that they paid the Landlord a security deposit of \$900.00 and a pet damage deposit of \$400.00. The Tenant has provided the better evidence that the Landlord received a \$400.00 pet damage deposit. I find that the Landlord extinguished the right to claim against the deposit and the Landlord owes the Tenants \$1,300.00 for the return of both deposits.

An arbitrator has the authority to use the security deposit and/or pet damage deposit to set off any awards granted to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord is granted monetary compensation as follows:

Refrigerator cleaning	\$25.00
Backyard cleaning	\$28.00

Kitchen floors	\$200.00
Wall damage	\$50.00
Filing fee	\$100.00
total	\$403.00

The Landlord has established a monetary award in the amount of \$403.00. I authorize the Landlord to retain the amount of \$403.00 from the deposits that the Landlord is holding.

I order the Landlord to return the balance of the deposits in the amount of \$897.00 to the Tenant. The Tenant is granted a monetary order against the Landlord in the amount of \$897.00. For enforcement, the order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Landlords established a claim for damage, cleaning, and the cost of the filing fee in the amount of \$403.00.

The Landlord is authorized to retain the amount of \$403.00 from the security deposit and pet damage deposit.

The Landlord is ordered to return the balance of the deposits in the amount of \$897.00 to the Tenant. The Tenant is granted a monetary order against the Landlord in the amount of \$897.00.

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: July 25, 2018

Residential Tenancy Branch