



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FFL

Introduction

On December 9, 2017, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act*, (“the Act”) for a monetary order for unpaid rent; damage to the unit; for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord attended the hearing; however, the Tenants did not. The Landlord provided affirmed testimony that she sent the Notice of Dispute Resolution Hearing and evidence to the Tenants using registered mail to the address that the Tenants provided at the end of the tenancy. The Landlord testified that she sent registered mail addressed to each Tenant on January 3, 2018, and the mail was returned to her as unclaimed. The Landlord provided the registered mail receipt numbers as proof of service. The Landlord provided a copy of the forwarding address document she received from the Tenants.

I find that in accordance with sections 89 and 90 of the Act, the Notice of Dispute Resolution Hearing documents are deemed to be received by the Tenants on the fifth day after they were mailed. The Landlord’s claims are unopposed.

The Landlord provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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 for damage to the unit?
- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to money owed or compensation for loss?

- Is the Landlord entitled to retain the security deposit in partial satisfaction of her claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy commenced in September 2017 as a six month fixed term tenancy that could continue thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$1,400.00. The Tenants paid the Landlord a security deposit of \$700.00.

The Landlord testified that the Tenants moved out of the rental unit on November 30, 2017.

The Landlord is requesting compensation for the following items:

| | |
|--------------------------------|----------|
| Loss of Rent for November 2017 | \$700.00 |
| Junk Removal | \$466.25 |
| Cleaning | \$401.00 |
| Damaged Furniture | \$300.00 |
| Painting and Repairs | \$590.00 |
| Guest Suite Violation | \$510.00 |
| Lock Charge | \$159.45 |

Loss of Rent

The Landlord submitted that the Tenants only paid \$700.00 of the rent due for November 2017. The Tenants moved out of the unit on November 30, 2017.

The Landlord is seeking to recover \$700.00 for unpaid rent.

Junk Removal

The Landlord is seeking to recover the cost for the pick-up and disposal cost of junk that the Tenants left behind in the rental unit. The Landlord provided photographs showing the junk left behind in the unit. The Landlord provided an invoice dated December 5, 2017 in the amount of \$466.25.

Cleaning

The Landlord submitted that the Tenants left the rental unit unclean at the end of the tenancy. The Landlord testified that the entire unit required cleaning. The Landlord provided photographs taken of the rental unit at the end of the tenancy. The Landlord testified that she hired a company to clean the unit and she provided a quote for the cost of cleaning in the amount of \$401.00.

Damaged Furniture

The Landlord submitted that the rental unit came furnished and the Tenants are responsible for damage to the furniture. The Landlord provided photographs of damage to the sofa; dining room chair; television; curtains, bedsheets, and bed.

The Landlord is seeking \$300.00 for the damaged items.

Painting and Repairs

The Landlord testified that she had to repaint the unit because the Tenants had been smoking in the rental unit. She testified that smoking in the unit was not permitted under the tenancy agreement. She testified that the bedroom doorway was damaged and she had to reframe and repair the doorway. The Landlord referred to the photographs of the rental unit.

The Landlord provided a receipt dated December 4, 2017 in the amount of \$590.00 for the cost of painting and repairs.

Violations and Lock Cost

The Landlord testified that the rental unit is within a condominium that has guest suites. The guest suites comprised of a bedroom and a bed are available to be rented on a day to day basis by the occupants of the condominium.

The Landlord testified that the Tenant rented a guest suite from the building strata. The Landlord testified that the Tenants guest did not vacate the guest suite on time; was smoking in the unit; and failed to return the guest suite key. The Landlord testified that the strata charged her for the cost of cleaning the suite; changing the locks; and for 17 nights of rental costs because the key was not returned.

The Landlord provided a copy of the rental contract between the Tenant and the building strata and provided a copy of a statement of account for the violations.

The Landlord is seeking to recover \$669.45 from the Tenants.

Security Deposit

The Landlord is seeking to retain the security deposit of \$700.00 in partial satisfaction of her claims.

Analysis

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

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.

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

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

Loss of Rent

I find that the tenancy agreement requires the Tenants to pay rent in the amount of \$1,400.00 each month. I accept the Landlord's testimony that the Tenants only paid \$700.00 for rent for November 2017.

I award the Landlord the amount of \$700.00 for unpaid November 2017 rent.

Junk Removal

I find that the Tenants left garbage and junk behind in the rental unit at the end of the tenancy. The Tenants are responsible to pay for the cost of removing and disposing of the garbage and junk.

I award the Landlord the amount of \$466.25 for junk removal and disposal.

Cleaning

I find that the Tenants left the rental unit unclean at the end of the tenancy. The Tenants are responsible for the costs for cleaning the rental unit at the end of the tenancy.

I award the Landlord the amount of \$401.00 for cleaning costs.

Furniture Damage

I find that the Tenants are responsible for damage to the Landlord's furniture. I award the Landlord \$300.00 for the damaged items.

Damage and Painting

The Landlord's claims are unopposed. I accept the Landlords testimony that no smoking was a term of the tenancy agreement. I find that the Tenants are responsible for the cost of repainting the unit and for damage to the bedroom doorframe.

I award the Landlord the amount of \$590.00 for the cost of painting and repairs.

Violation and Lock

The Landlords claim to recover \$669.45 in fines related to the Tenants rental of a guest suite is dismissed.

I have reviewed the rental agreement between the Tenant and the Strata. The rental agreement for the guest suite is on a nightly basis at \$30.00 per night with a \$100.00 damage deposit that will be returned following an inspection of the guest suite. Other charges may be assessed related to cleaning the suite and returning the key.

I find that the agreement was between the Tenant and the Strata and not the Tenant and the Landlord. The terms of the guest suite agreement do not conform to the rights and responsibilities that a Landlord and Tenant have under the Act. The guest suite rental is on a day to day basis and the deposit is more than is permitted under the Act. The agreement includes extra fees for cleaning and a charge of full rent for failure to return keys. I find that the agreement is not a residential tenancy agreement under the Act.

The Landlord wants to recover the cost of the fines and charges levied by the Strata related to the rental of the guest suite; however, there is insufficient evidence from the Landlord that the Tenants agreed to follow all the Strata building rules and would be responsible for any fines for breaches of the rules. The Landlord did not address this issue in her testimony and her documentary evidence of the tenancy agreement does not include any agreement between the parties regarding Strata rules and fines.

Security Deposit

I authorize the Landlord to retain the security deposit in partial satisfaction of her claims for unpaid rent, cleaning and damage.

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 mostly successful with her application, I order the Tenants to repay the \$100.00 of the fee that the Landlord paid to make application for dispute resolution.

Awards

The Landlord has established a monetary claim in the amount of \$2,557.25. I authorize the Landlord to retain the amount of \$700.00 from the security deposit. After setting off the security deposit of \$700.00 towards the award of \$2,257.25, I find that the Tenants owe the Landlord the balance of \$1,857.25.

I grant the Landlord a monetary order in the amount of \$1,857.25.

Conclusion

The Landlord established a monetary claim against the Tenants for unpaid rent; damage; cleaning; and the filing fee in the amount of \$2,557.25.

I authorize the Landlord to retain the security deposit in the amount of \$700.00 and I grant the Landlord a monetary order in the amount of \$1,857.25.

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 31, 2018

Residential Tenancy Branch