



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing was convened in response to an application for dispute resolution made December 6, 2017 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on August 1, 2017 on a fixed term for 10 months. The tenancy ended on November 1, 2017. No security deposit was collected. Rent of \$1,200.00 was payable on the first day of each month. No forwarding address was provided to the Landlord. No move-in or move-out inspection was conducted with inspection reports completed and copied to the Tenants.

The Landlord states that the Tenant left the house, including the carpet unclean, and claims \$300.00 as the estimated costs for cleaning, shampooing and the replacement of the carpet. No invoice was provided. The Landlord states that it took him 16 hours to clean the unit, including a bathroom rug, at an hourly cost of \$35.00.

The Tenant states that in mid-October 2017 the Landlord threatened and scared the Tenants to the extent that they left the unit and called the police. The Tenant states that they only returned with the police on October 22, 2017 and once again with a friend. The Tenant states the water had been turned off by the Landlord by October 22, 2017 and that they cleaned the house as well as they could, removing all their garbage. The Tenant notes that several of the Landlords' photos have portions covered and that there was nothing detailed in the monetary order worksheet to understand what the Landlord was claiming costs for. The Tenant states that the unit was dirty at move-in and that the Tenants had to clean the unit. The Tenant states that for this reason the Landlord did not collect a security deposit. The Tenant provides photos of the unit and yard. The Landlord states that he turned the water off after the Tenants were gone for a few days for safety reasons but that the Tenants knew how to turn the water back on and that the water controls were not locked. The Landlord states that he provided photos of the garbage left behind and that it took the Landlord a couple of trips to haul it away.

The Landlord states that the tenancy agreement requires the Tenant to maintain the yard and fences. It is noted that the tenancy agreement includes a handwritten note as follows: "3.05 Lawn Maintenance, house plants, frozen pipes, bear proofing, etc.". The Parties agree that the Tenants were informed that this section meant that they were to maintain the lawn, water the indoor plants, maintain the pipes from freezing and to collect fruits off the trees. The Landlord states that the Tenants failed to maintain the yard and that the Landlord had to cut the lawn during the tenancy and clean up the yard and fruit after the end of the tenancy. The Landlord claims an estimated \$400.00. No invoice was provided setting out the hours, tasks completed, or charges per task or hour and the Landlord states that he came up with the claimed amount off the top of his head

but that he spent at least 14 hours on the yard work repairs himself. The Tenant states that they maintained the yard by themselves during the tenancy and cleaned up the fruit as it dropped. The Tenant states that the Landlord, while drunk, would come in the evenings and use his riding mower to tear up the yard. The Tenant states that the yard was left maintained by the Tenants at the end of the tenancy.

The Landlord states that the Tenant left a fence lock and a fence damaged and claims the estimated cost of \$350.00 for the repair of both items. The Landlord states that the lock was repaired by the Landlord welding the lock and that the 200 feet of damaged fencing was replaced by the Landlord with rolls of fencing. The Landlord states that he completed the work himself. No invoice was provided and the Landlord states that there "might be an invoice for the costs". The Tenant states that the lock was old and rusty and that it was accidentally pulled off the fence. The Tenant states that the Landlord had previously told them that the lock replacement would only cost \$20.00. The Tenant states that the wiring was damaged by bears.

The Landlord states that the Tenant left the unit with additional damages and claims an estimated \$400.00. The Landlord states that he completed the work himself. No invoice was provided. Of this amount the Landlord claims as follows:

- \$100.00 for the cost of sanding a 3 foot by 3 foot water stain on the hardwood floor that was about 10 years old;
- \$100.00 for the replacement of bathroom tiles that were at least 20 years old. The Landlord states that about 10% of the tiles were damages prior to the tenancy and that the Tenants left the remaining 90% damaged.
- \$100.00 for two porch screens: one damaged by the Tenants dog and one by a bear. The Landlord provides two photos of the porch screens noted to be taken after repairs;
- \$100.00 for a sliding door that came off the tracks. The Landlord made the repairs himself with about 4 hours labour.

The Tenant states that the water damaged area was present at the outset of the tenancy and that the Tenants did not cause the damage. The Tenant states that they did not cause any damage to any tiles. The Tenant states that neither of the screens was damaged the last time the Tenants were in the unit. The Tenant states that they never noticed any damage to the sliding door during the tenancy but noticed some damage around the sliding door lock when they were last at the unit on October 29, 2017. The Tenant states that they believe that the Landlord caused this damage himself by trying to break into the unit while the Tenants were not there.

The Landlord states that the Tenant was required to pay rent to the end of the fixed term and as the Tenant moved out early the Landlord claims the remaining 7 months of rent left on the fixed term in the amount of \$8,400.00. The Landlord states that the Tenants left the unit damaged and it took the Landlord a long time to make the repairs. The Landlord states that he did not want to be a landlord anymore so he just got it ready for sale. The Landlord states that the unit remained vacant and was listed for sale by April 2018. The Tenant states that following the incident on October 13, 2017 where the Landlord was drunk and made threats towards the Tenants, the Tenants left the unit in fear. The Landlord states that the police visited the Landlord but did not seem to be concerned over the allegations of the Tenants. The Landlord states that he was upset by the Tenants' dog having mauled another dog and by the Tenants failing to maintain the yard and fruit trees to keep the bears out. The Landlord states that there were no charges or any restraining order.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Regardless of the Tenant's evidence of

being concerned about the Landlord, the Tenants are still required to leave the rental unit reasonably clean. While the Landlord claims a large amount of time in cleaning, there is no move-out report indicating the extent of any damage, photos labelled dirty stove, porch and rug are covered or blocked out, and the remaining photos that are not covered show primarily damages with only a couple of photos that depict minor cleaning to a back step, the sink and the fridge. There is a photo of articles to be hauled away. The photos of the carpet show a very aged carpet and I note that the Landlord's evidence is that the carpet was replaced. Further I consider the Tenant's undisputed evidence that the unit was not clean at move-in and there is no move-in condition report to document the state of the unit at that time. As a result I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the unit unclean to the extent claimed. Given the minor cleaning misses and the one load of garbage that can be established by the photos, I find that the Landlord is only entitled to a nominal sum of **\$100.00**.

The Landlord's evidence in relation to the costs for yard cleaning is confusing given that there is no invoice detailing the work done at the end of the tenancy, the evidence that work was also done by the Landlord during the tenancy, and the Landlord's evidence that there was no basis or calculations for the amount claimed. Further the photos of the yard are either blocked or show no issues except for one photo showing leaves on the ground. For these reasons, given the lack of a move-out report and considering the Tenants' evidence of yard maintenance during the tenancy I find on a balance of probabilities that the Landlord has not substantiated either the damages or the costs claimed and I dismiss the claim in relation to yard maintenance.

Given the undisputed evidence of the age of the lock, that the bears damaged the wiring, and considering that there is no invoice detailing any supply costs or hours of labour, I find on a balance of probabilities that the Landlord has failed to provide sufficient evidence as a basis to support the costs being claimed. I therefore dismiss this claim.

Given the lack of a move-in condition report as evidence of the state of the flooring and considering the Tenants' plausible evidence of a pre-existing stain, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the stain on the flooring. I therefore dismiss the claim for the repair of the stain.

Policy Guideline #40 "Useful Life of Building Elements" provides that flooring tile has a useful life of 10 years. Based on the undisputed evidence that the bathroom tile was 20 years old I find that the Landlord has not substantiated that the Tenants' caused any damage beyond reasonable wear and tear on very old tiles. I dismiss the claim for the tiles.

Evidence of screen damage by a bear does cannot be considered, on its own, evidence of damage by the Tenants. Given the lack of a move-out condition report, no photos showing any damage to a porch screen prior to repairs, and considering the Tenants' plausible evidence that no screens were damaged by their dog, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage claimed to the screens and I dismiss the claim for the replacement costs of two screens.

Given the lack of a move-out report, the Tenants' plausible evidence of damage to the sliding door by the Landlord's entry into the unit and I note that the Landlord did not dispute the entry, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the sliding door to be damaged and I dismiss the claim for costs of its repair.

There is no evidence that the Landlord sought to rent the unit for any period of time after the Tenants moved out. I also consider the undisputed evidence of the Landlord's behavior being reported to the police to support the Tenants' stated fear of the Landlord. As a result I find on a balance of probabilities that the Landlord contributed to the ending

of the tenancy and that the Landlord failed to take any reasonable steps to mitigate the rental losses claimed. For these reasons I dismiss the claim for unpaid rent.

As the Landlord's claims have met with minor success I find that the Landlord is only entitled to recovery of **\$50.00** as half of the \$100.00 filing fee for a total entitlement of **\$150.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$150.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that 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 Act.

Dated: August 1, 2018

Residential Tenancy Branch