



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction and Preliminary Matters

On June 13, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, a Monetary Order for loss of rent, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agent and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

The Landlord stated that he forwarded the Notice of Hearing and evidence package to the Tenant via registered mail and the Tenant stated that it was received. The Tenant stated that, although he tried to personally serve the Landlord with the Tenant’s evidence package, he was unsuccessful and ended up leaving it in the Landlord’s mailbox one week before this hearing. The Landlord stated that he had not received the evidence package. I find that the Tenant did not serve his evidence in accordance with the *Rules of Procedure - Rule 3*; therefore, the Tenant’s evidence package is being excluded from 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

Should the Landlord receive a Monetary Order for damages in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for loss of rent in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim in accordance with Section 72 of the Act?

Should the Landlord be reimbursed for the cost of the filing fee in accordance with Section 72 of the Act?

Background and Evidence

The Landlord stated that the month-to-month tenancy began on July 1, 2015 and the monthly rent of \$1,050.00 was due on the first of each month. The Landlord collected a security deposit of \$525.00 and currently holds that amount. The Tenant stated that he took possession of the rental unit on June 28, 2015.

The Landlord submitted a copy of the Condition Inspection Report that was completed at the beginning of the tenancy, on June 28, 2015, and at the end of the tenancy on May 31, 2018 (although, the Tenant stated the move-out inspection occurred on May 30, 2018). The Landlord referred to the Report and noted that the move-in comment by the Living Room floor indicated, "no carpet" while it was noted that "lifted flooring under window" was added to the comment column during the move-out inspection. Agents for the Landlord signed both the move-in and move-out reports and the Tenant signed the move-in report, while his agent signed the move-out report. The agent for the Tenant acknowledged (according to the report) that the "floor below window in main suite is lifted" and agreed that the report fairly represents the condition of the rental unit. The Tenant provided his forwarding address to the Landlord via the Condition Inspection Report at the end of May 2018.

The Landlord submitted pictures of the damaged floor and pointed out that the seams of several laminate floor boards were bubbled within a 5-foot by 8-foot area. The Landlord indicated that the boards had been compromised by moisture and the pictures showed that the boards easily broke upon removal. The Landlord agreed that the floor boards were made of particle board and laminate, not hardwood. The Landlord testified that he did not know how the flooring was damaged, but that the house was built four years ago and at that time, the flooring had been installed on top of a vapour barrier, on the concrete floor of the basement.

The Landlord stated that three quotes for repair were obtained and said that the Landlord chose the cheapest quote. He submitted the invoices for the company that

completed the repair and noted that there was no report or notes as to the source of the damage. The bill included costs for the removal of the old floor, installation of the new floor, replacement and installation of new baseboards, transitions and surface preparation for a total of \$1,648.50. The Landlord also submitted a separate invoice for the replacement vinyl flooring at a cost of \$672.45. Total claim for damaged floors: \$2,320.95.

The Tenant acknowledged that the flooring appeared to be damaged by moisture and that he noticed it when he moved out of the rental unit. The Tenant stated that he was not responsible for the damage. The Tenant testified that his couch had been positioned over the area of damage and that he felt that the flooring material was cheap and that the damage was as a result of natural wear and tear for that kind of flooring, especially installed in a basement environment.

The Landlord also claimed the loss of one month's rent. He stated that the Tenant provided notice on May 1, 2018 at 8:00 p.m. to advise that he was moving out of the rental unit on May 30, 2018. The Landlord stated that the Tenant did not give a full month's notice to end the tenancy and furthermore, as a result of the Tenant delaying the showing of the rental unit, also delayed the ability for the Landlord to address the damaged floors prior to finding a new tenant. The Landlord stated that the arrangements to advertise the rental unit did not begin until mid-May and that new tenants were found for July 15, 2018. The Landlord (Agent) testified that he was unsure if the Landlord had had any conversations with the Tenant about late notice or rent payments for June and did acknowledge that the Landlord had scheduled a move-out inspection for the end of May. The Landlord stated that he had provided the Tenant notice to enter the rental unit in mid-May and subsequently entered, noticed some damage to the wall, which the Tenant soon afterwards fixed, but did not notice any damage to the floor.

The Tenant testified that when he emailed the Landlord his notice, that she immediately responded to thank him and made arrangements for a move-out inspection on May 30, 2018. He felt that she accepted his notice and never mentioned that it was late or that she expected any rent for June. He followed through with the move-out inspection and provided vacant possession of the rental unit, as planned, on May 30, 2018. The Tenant stated that he never interfered with the Landlord entering the rental unit and although he had never received any notice to enter, he was aware that the Landlord had entered and could enter to show the rental unit at any time.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply. Section 7(2) of the Act establishes that the party who claims compensation for the damage or loss must do whatever is reasonable to minimize the damage or loss.

In this case, the Landlord is responsible to prove the existence of the damaged floor and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the Tenant. I accept the testimony from both parties that the laminate floor in the living room of the rental unit was damaged as a result of being exposed to moisture. The Landlord stated that he did not know how the damage to the floor occurred, nor was there a report from the installer as to possible reasons for the damage. The only evidence submitted that suggests that the Tenant may be responsible for the damage is the Condition Inspection Report. The report noted that there was no damage at the time the Tenant moved in and then noted that damage was present when the Tenant moved out. Although a Condition Inspection Report can be conclusive in some situations, for example a hole in the wall that occurred during the tenancy; in this situation the actual source of the damage, and the subsequent accountability, is difficult to identify. I find that the Tenant's suggestion that low quality flooring, being installed above a concrete basement floor, could become compromised due to the naturally occurring moisture is not unreasonable and raises doubt as to the Tenant's responsibility for the damage. I find that the Landlord has failed to provide sufficient evidence, beyond the balance of probabilities, to prove that the damage to the living room flooring stemmed directly from the Tenant's violation of the Tenancy Agreement or a contravention of the Act. As such, I dismiss the Landlord's claim for a Monetary Order for the damaged living room floor.

The Landlord is claiming compensation for one month's rent as the Tenant failed to provide proper notice to end the tenancy pursuant to Section 45 of the Act. I accept the Tenant's testimony that he was late by one day and did not provide proper written notice to end the tenancy pursuant to Section 45 of the Act. Furthermore, I accept the Landlord's undisputed testimony that they did not find a new tenant for the rental unit until July 15, 2018. As such, I find that the Landlord has established a monetary claim for unpaid rent. However, I must also consider the Landlord's testimony that it took over two weeks to advertise for new tenants and when I consider Section 7(2) of the Act, I find that the Landlord did not mitigate their losses to the full extent. As a result of the above findings, testimony and evidence, I order the Tenant to pay the Landlord half a month's rent in compensation for the late notice to end tenancy and the Landlord's resulting loss of rent.

As the Landlord was only partially successful with their Application, I decline to authorize that the Landlord be reimbursed for the filing fee.

The Landlord has established a monetary claim in the amount of half a month's rent for a total of \$525.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$525.00, for half a month's rent. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$525.00, in full satisfaction of the monetary claim.

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: September 06, 2018

Residential Tenancy Branch