



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 July 16, 2018, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for unpaid rent and damage; to retain the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenants attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. 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.

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 rental unit and for a loss of rent?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord authorized to retain the security deposit in partial satisfaction of the claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on February 1, 2018, and ended on June 4, 2018; by order of an Arbitrator in a Decision in a decision dated August 13, 2018. Rent

in the amount of \$2,695.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,422.00.

The Landlord is seeking compensation in the amount of \$22,555.00 for the following items:

Loss of Rent (July and August)	\$5,690.00
Compensation due to Tenant renting out the unit	\$15,165.00
Damage	\$1,700.00

Loss of Rent

The Landlord testified that he is seeking compensation for a loss of rent because the tenancy was a fixed term tenancy and the Landlord was not able to rent the unit out due to a dispute resolution hearing that was heard on August 3, 2018.

In reply, the Tenant testified that the matter was considered at the earlier hearing.

Compensation due to Tenant renting out the unit without authorization

The Landlord testified that the Tenant illegally rented out the rental unit on an Air BnB site. The Landlord testified that the Tenant used an alias name and rented out the unit for profit. The Landlord testified that the Tenant was not authorized to sublet the unit and the Landlord feels entitled to compensation.

In reply, the Tenant testified that she did not seek permission from the Landlord prior to renting out the unit on occasion, intermittently.

Damage

The Landlord testified that the Tenant painted the rental unit without permission. The Landlord testified that he has to repaint the rental unit at an estimated cost of \$1,575.00. The Landlord testified that the rental unit has not been painted and the unit was re-rented as of September 1, 2018.

In reply, the Tenant testified that she only painted the two bedrooms and the living room and kitchen. She testified that she did not ask permission prior to painting.

The Tenant testified that she did not have an opportunity to leave the rental unit in the same condition it was in at the start of the tenancy because she was locked out of the rental unit.

Window Casement

The Landlord testified that the Tenant is responsible for a broken window latch on the second bedroom window. The Landlord testified that the latch was fine at the start of the tenancy. The Landlord testified that it cost him \$50.00 to repair the latch. The Landlord did not provide a receipt. The Landlord provided a photograph of the latch.

In reply, the Tenant testified that she was the last person living in the rental unit and she never noticed a broken latch.

Security Deposit

The Landlord applied to keep the security deposit on July 16, 2018.

The Tenant testified that she was never asked for her forwarding address.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that 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.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

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.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

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

I have considered the Arbitrators Decision of August 13, 2018. The Arbitrator writes:

“I find that the landlord’s breach of sections 30 and 31 effectively ended this tenancy on June 4, 2018. I find that the tenant is entitled a pro-rated return of June 2018’s rent...”

The Arbitrator found that the Landlord breached sections 30 and 31 of the Act by restricting the Tenants access to the rental unit and by changing the locks or other means to give access.

Loss of Rent

I find that the tenancy ended on June 4, 2018. Since the Tenant was locked out of the rental unit, the Landlord’s claim to be compensated for a loss of rent for July and August fails. The Landlord is responsible for ending the tenancy. The Tenant is not responsible for the loss of rent. The Landlord’s claim is dismissed without leave to reapply.

Compensation due to Tenant renting out the unit without authorization

While I accept that the Tenant breached the tenancy agreement by renting out the unit without the Landlord’s permission, the Landlord has failed to establish that he suffered a monetary loss. The Landlord was receiving the monthly rent under the tenancy agreement. Whether or not the Tenant made a profit by renting out the unit does not entitle the Landlord to further compensation. The Landlord provided insufficient evidence that he has suffered a loss due to the Tenant’s breach. The Landlord’s claim for compensation is dismissed without leave to reapply.

Damage

The Landlords claim for the cost of painting and latch damage are dismissed without leave to reapply. The Landlord breached the Act by locking the Tenant out of the rental

unit. I find that the Tenant did not have an opportunity to clean or repair the rental unit prior to the end of the tenancy.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful with his application, I do not award the cost of the filing fee.

Security Deposit

Since I have found that the Landlord was not successful with the claims for compensation; the Landlord is not authorized to keep the security deposit. I order the Landlord to return the deposit of \$1,422.00 to the Tenant. I grant the Tenant a monetary order in the amount of \$1,422.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord was not successful with the claims for compensation.

I order the Landlord to return the deposit of \$1,422.00 to the Tenant. I grant the Tenant a monetary order in the amount of \$1,422.00.

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: December 19, 2018

Residential Tenancy Branch