



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RECLAIM PERSONAL DEVELOPMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On August 13, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their 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.

Preliminary and Procedural Matters

The Tenant testified that she served a copy of her documentary evidence to the Landlord using registered mail on November 26, 2018. The Tenant testified that she sent the mail to the Landlord's service address.

The Landlord testified that she did not receive the evidence. The Landlord testified that she is in the middle of a divorce and that the Tenant knows she is not at the address.

The Tenant testified that the Landlord did not provide her with a new or different address for service of documents.

I find that the Tenant served her documentary evidence to the Landlord at the address provided by the Landlord. I find that the evidence was served in accordance with sections 89 and 90 of the Act. The Landlord is deemed to have received the documents on the fifth day after they were mailed. The Tenant's evidence is accepted and will be considered.

The Landlord's application includes a monetary claim in the amount of \$24,850.00 for her time to deal with the rental property and supervise repairs. The Landlord testified that these issues kept her away from performing her duties for her other companies and the amount claimed is tied to her corporate rate.

The Landlord's claim for \$24,850.00 is dismissed. There is no provision under the Act where a Landlord or Tenant is responsible to pay the lost wages of the other party who supervises repairs, prepares for a hearing, or participates in a dispute resolution hearing. I find that the Landlord's costs are the cost of doing business as a Landlord. Whether the Landlord chooses to perform the duties, or hire a property management company, these costs are not recoverable from the Tenant.

The hearing proceeded on the Landlords claims for damage and loss of rent.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit?
- Is the Landlord entitled to compensation for a loss of rent?
- Is the Landlord entitled to keep the security deposit?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on January 1, 2018, on a month to month basis. The Tenant was to pay the Landlord monthly rent in the amount of \$850.00. The Tenant paid the Landlord a security deposit of \$425.00. The rental unit is an upper unit in a house that contains two units.

Rent

The Landlord is requesting compensation for a loss or rent in the amount of \$3,900.00. The Landlord testified that she offered the Tenant a great deal by setting the rent at \$850.00 per month in exchange for keeping the rental unit clean and maintaining the yard. The Landlord submitted that the Tenant reneged on the agreement so the Landlord is seeking \$600.00 per month in additional compensation.

In reply, the tenant testified that the Landlord cannot unilaterally decide to charge her extra monthly rent. The Tenant submitted that the tenancy agreement does not contain a term requiring her to pay an additional \$600.00 per month.

Damage \$6,250.00

The Landlord is seeking monetary compensation for damage to the rental unit.

The Landlord testified that prior to the Tenant moving into the unit the kitchen linoleum was replaced and the carpets in the bedroom were replaced. The Landlord testified that the linoleum is stained and provided photographs. The Landlord also testified as follows:

- Bedroom doors need replacement
- Walls needed to be repaired and repainted (photograph of small hole in a wall)
- The sliding glass door was beyond repair.
- Basement ceiling tiles were water damaged
- Basement floor required stripping and repainting
- Bathroom requires repainting
- Weeds in the backyard (photograph of weeds in yards and in a truck)
- Under the fridge was dirty

The Landlord provided photographs of the rental unit in support of her claims. The Landlord provided an invoice dated August 14, 2018, for the cost of \$3,026.71 to replace the linoleum flooring and carpet.

The Landlord did not provide any actual receipts for the cost of purchasing any items or for the any cleaning costs.

In reply, the Tenant testified that the Landlord's photographs were taken while the Tenant was still living in the rental unit and while she was packing and moving. She submitted that none of the Landlord's photographs show the unit after the Tenant had completely moved out. The Tenant testified that the Landlord told her that her sons had neglected the yard prior to the Tenant moving in.

The Tenant submitted that the Landlord had the house up for sale including pictures within four days of the official end of the tenancy, July 31, 2018. The Tenant provided a print out of the Landlord's advertisement and photographs.

The Tenant testified that she never had a bedroom door. She testified that all the doors and walls had holes from when the Landlord lived there with her children.

The Tenant testified as follows:

- The ceiling tiles were missing at the start of the tenancy.
- The bathroom was left clean.
- The lawn was mowed prior to leaving.
- The carpets were steam cleaned at the end of the tenancy.
- The floor had pre-existing damage.
- The dishwasher was never installed.

The Tenant provided photographs that she took of the rental unit at the end of the tenancy.

The Tenant testified that the Landlord failed to perform a move in inspection at the start of the tenancy. The Tenant testified that she hired cleaners to assist her with cleaning the unit at the end of the tenancy. Tenant provided a written statement from the cleaners.

The Tenant submitted that she returned to the unit during July 2018, after she had cleaned and moved out and she noticed that and the Landlord had been entering the unit and was making a mess.

The Tenant provided a written statement from the person who assisted with cleaning the unit. The cleaner states that she cleaned the kitchen and floors. The cleaner states that house was clean to an acceptable standard.

The Tenant provided written statements from other people that indicate the damage to the flooring and damage to the walls in one of the rooms was pre-existing damage.

The Tenant also provided photographs from February 2018 and March 2018 that a previous Tenant provided to her that show the state of repair of the rental unit prior to her moving into the unit. The photographs show that there are holes and missing and water stained basement ceiling tiles.

In reply, the Landlord testified that she did not perform a move in inspection and complete a condition inspection report.

The Landlord testified that she is now living in the rental unit. She testified that the linoleum has not been replaced yet. She testified that she has had the carpets steam cleaned. The Landlord testified that the walls were painted in December 2017 and she had the walls painted after the Tenant left.

The Landlord testified that the doors were 4 -5 years old and the Tenant and her children added to the existing damage on the doors. The Landlord testified that she never replaced the bedroom door.

Security Deposit

The Tenant testified that she provide the Landlord with her forwarding address in writing on August 13, 2018.

The Landlord applied to keep the security deposit on August 13, 2018.

Analysis

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

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 21 of the Residential Tenancy Regulation states:

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the Landlord failed to perform a move in inspection with the Tenant as required by the Act. Overall, the Landlord has provided no evidence to establish the condition of the rental unit at the start of the tenancy either by way of documentary, such as the required condition inspection report or photographic evidence. Failing to establish the condition of the rental unit at the start of the tenancy significantly impacts the Landlord's ability to provide sufficient evidence to establish that the Tenants might be responsible for any damage to the rental unit as a result of their actions and/or neglect during the tenancy.

The Landlord is seeking compensation for specific items that she alleges were damaged, however the Landlord did not assign a monetary value to each item of her claim, and she did not provide receipts.

Section 2.5 of the Residential Tenancy Branch Rules of Procedure states an applicant must submit:

- *a detailed calculation of any monetary claim being made*

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.

Rent

I find that the tenancy agreement does not contain any term that requires the Tenant to pay additional rent if she fails to maintain the rental property.

I find that the Landlord cannot make changes to the terms and conditions of the tenancy agreement without the consent of the Tenant. Since there was never any agreement regarding an increase to the monthly rent, the Landlords claim for compensation fails.

The Landlords claim for \$3,900.00 for additional rent is dismissed.

Damage

The Landlord failed to comply with the requirement to conduct and prepare a condition inspection report. The Landlords breach of the Act, has resulted in the extinguishment of her right to apply against the security deposit.

I find that the Tenant provided the better evidence regarding the cleanliness of the rental unit at the end of the tenancy. I find that the Tenant has established that some of the Landlord's claims are for pre-existing damage that occurred prior to the start of the Tenant's tenancy. This finding that the Landlord is attempting to receive compensation for items that the Tenant is not responsible for makes me question the overall validity of all the Landlord's claims. I am also mindful that the Landlord was seeking compensation of extra rent, and compensation of \$24,850.00 for her time.

Many of the Landlords monetary claims are for items that have not been repaired. The Landlord has not replaced the linoleum or carpet. The Landlord did not provide any actual receipts.

I find that the Landlord has failed to provide sufficient evidence that the Tenant has breached the Act or tenancy agreement by failing to clean the rental unit to a reasonable standard. In addition, the Landlord has not proven that she suffered a loss or established the value of the loss by providing actual receipts.

Based on the evidence before me and my concerns about the validity of the Landlord's claims, the Landlord's application is dismissed in its entirety.

I order the Landlord to immediately return the security deposit of \$425.00 to the Tenant.

I grant the Tenant a monetary order in the amount of \$425.00. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Landlord provided insufficient evidence to support her monetary claims for a loss of rent and damage. The Landlord's application is dismissed in its entirety.

I order the Landlord to immediately return the security deposit of \$425.00 to the Tenant.

I grant the Tenant a monetary order in the amount of \$425.00. The monetary order must be served on the Landlord and may be enforced in the Provincial 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 *Residential Tenancy Act*.

Dated: January 3, 2019

Residential Tenancy Branch