



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FFL

Introduction

This is a Review Hearing Decision from a hearing conducted on December 21, 2018. The original hearing was scheduled for October 11, 2018, and a Decision was made on October 17, 2018. The Landlord did not attend the original hearing and the Landlords' application was dismissed.

On November 6, 2018, the Landlord submitted an Application for Review Consideration on the basis of being unable to attend the original hearing.

On November 14, 2018, an Arbitrator heard the Landlord's Application for Review Consideration and suspended the October 17, 2018, Decision until a new hearing is completed.

Landlords Application

On March 15, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for money owed or compensation for damage or loss; for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing on December 21, 2018. 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 Landlords' application dated March 5, 2018, indicates that the Landlord is seeking compensation in the amount of \$2,472.88. The Landlord submitted additional documentary evidence containing a monetary order worksheet that indicates that Landlord is seeking compensation in the amount of \$3,525.00. The Landlord did not complete an application to amend his original application and submit it to the Residential Tenancy Branch. The Landlords monetary claim is restricted to the amount of \$2,472.88 listed in his application that was served on the Tenants.

The Landlord provided a copy of the tenancy agreement and 20 pages of documentary evidence prior to the hearing. The Tenant testified that he did not receive a copy of the Landlord's documentary evidence. The Landlord testified that he sent the documents to the Tenant on November 22, 2018, using express post. The Landlord testified that express post leaves a notification card when nobody is able to receive the mail. The Landlord provided a copy of the express post mailing document that indicates the mail was sent to the Tenant's address on November 14, 2018.

Pursuant to section 71 of the Act, I find that the Landlord's evidence was sufficiently served to the Tenants on November 27, 2018, for the purposes of the Act. The Landlords evidence will be considered.

Background and Evidence

The Landlord and Tenant testified that the tenancy began on June 1, 2017, and ended on March 3, 2018. Rent in the amount of \$1,600.00 was to be paid on the first day of each month. The Landlord collected an \$800.00 security deposit and an \$800.00 pet damage deposit. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that when the Tenant moved out on March 2, 2018, there was damage present in the rental unit.

The Landlord is requesting compensation for the following items:

Floor Repairs	\$1,472.88
Insurance deductible	\$1,000.00

Floor Repairs \$1,000.00

The Landlord testified that the Tenant erected an aquarium which leaked water onto the flooring. The Landlord testified that he checked the flooring and noticed the flooring was cupping from water damage. The Landlord testified that the aquarium had been leaking for months. The Landlord testified that the damage was contained to a 10 foot by 10 foot area. The Landlord testified that the flooring was new in 2006.

The Landlord testified that the same type of flooring was no longer available. The Landlord testified that he had to replace the entire floor. The Landlord testified that his insurance paid for the repair; however, the Landlord had to pay a \$1,000.00 insurance deductible. The Landlord provided documents that indicate a restoration company found damage to a laminate floor and submitted a repair estimate. The Landlord provided a copy of a Deductible Invoice dated May 29, 2018, in the amount of \$1,000.00. The Landlord did not provide the repair estimate or an invoice for the actual cost of the floor replacement.

In reply, the Tenant testified and acknowledged that the aquarium did some damage to the flooring. The Tenant testified that the damaged area was approximately 6 feet by 8 feet. The Tenant testified that he had a person attend to look at the damage and they told the Tenant it could be repaired for \$200.00. The Tenant testified that the Landlord began replacing the floor on March 3, 2018, and the Tenant did not have an opportunity to repair the floor. The Tenant did not provide any documentary evidence to support his suggestion that the repair would only cost \$200.00.

The Landlord is seeking to recover the cost of the insurance deductible.

Loss of Rent \$1,472.88

The Landlord testified that the rental unit was not rentable for the period of March 3 until the end of April 2018. The Landlord testified that the flooring and cabinets were removed during this period. The Landlord testified that it took two months to complete the floor repairs.

The Landlord testified that he was not going to rent the unit out; however, he planned to use the space for himself and his employee. He testified that he suffered a loss of revenue because he could not use the space.

In reply, the Tenant testified that the Landlords claim makes no sense because the Landlord issued him a notice to end tenancy for Landlord use of property and the Tenant accepted the notice and moved out.

Security Deposit

The tenancy ended on March 2, 2018.

The Landlord applied for dispute resolution and claimed against the security deposit on March 15, 2018.

The Landlord is requesting to keep the deposit in full or partial satisfaction of his claims.

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.

After considering the testimony of the Landlord and Tenants, and on balance of probabilities, I make the following findings:

Floor Repairs

The Residential Tenancy Policy Guideline #40 useful Life of Building Element's is a guideline for determining the useful life of building elements when considering applications and determining damages. The guideline provides that an arbitrator may consider the useful life of a building element and the age of the item. If an arbitrator finds that a Landlord makes repairs to a rental unit due to damage caused by a Tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement. The guideline provides that the useful life of hardwood flooring is 20 years.

I find that the Tenant is responsible for water damage to a small area of the laminate flooring. In considering the Tenants' responsibility for the costs of the repair, I have considered the age of the flooring. I accept the Landlord's evidence that the flooring was new in 2006. I find that the flooring is approximately 12 years old.

With respect to the submission that the entire wood floor needed to be replaced because the original flooring was not available; I find it is reasonable to accept that 12 year old laminate flooring is no longer available. I find that the Landlord has a right to be made whole by having the flooring in the same condition it was prior to the damage. I find it would not be reasonable to replace the flooring in the damaged area with a different style or color of flooring. I find that the Tenant is responsible for the cost to replace all the flooring subject to depreciation.

With respect to depreciation, I find that the useful life of flooring is 20 years. I find that the flooring had 8 years of useful life remaining. I find that the Tenant is responsible for the lesser of 8/20 of the cost of the floor repair, or the \$1,000.00 that the Landlord is claiming. I find that the Landlord failed to provide testimony or documents to establish the actual repair costs. While I find that it is reasonable to accept that the \$1,000.00 deductible is less than the actual cost of repair; I am unable to determine whether or not \$1,000.00 is more than 8/20 of the amount of the actual repair cost.

The Landlord has proven that the Tenant has breached the Act, due to damage and I find that he has suffered a loss; however, the Landlord has not proven the value of the loss. There is insufficient evidence from the Landlord on the actual cost of repairs.

In accordance with Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss, an arbitrator may award monetary compensation only as permitted by

the Act or the common law. The value of the damage or loss is established by the evidence provided. An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

After considering the circumstances before me, I find that the Landlord is entitled to some compensation. Since I find that the deductible of \$1,000.00 is less than cost of the actual repair cost, I award the Landlord 8/20 of the amount of the deductible. I find that the Tenant owes the Landlord the amount of \$400.00.

Loss of Rent

The Landlords claim for \$1,472.88 is dismissed. The Landlord testified that it took two months to complete the flooring repairs. I find that the Landlord did not suffer a loss of rent as he was not re-renting the unit. The Landlord ended the tenancy for Landlord use of property. The Landlord testified that he was going to use the space for work purposes and he lost revenue.

I find that in the circumstances the Tenant is not responsible to compensate the Landlord for a loss of rent. I also find that the Landlord failed to provide sufficient evidence that he suffered a loss of revenue due to not being able to use to the work space for his personal work purposes.

The Landlords claim for \$1,472.88 is dismissed without leave to reapply.

Security Deposit

I find that the tenancy ended on March 3, 2018, and the Landlord applied against the security deposit and pet damage deposit on March 15, 2018.

The security deposit held by the Landlord will be used to set off any monetary amounts awarded to the Landlord.

Filing Fee

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 partially successful with his

application, I order the Tenants to pay the Landlord for the \$100.00 cost of the filing fee for this hearing.

Monetary Awards

The Landlord has established a monetary claim in the amount of \$500.00. I authorize the Landlord to keep \$500.00 from the security deposit and pet damage deposit of \$1,600.00. The Landlord is ordered to immediately return the balance of \$1,100.00 to the Tenants.

I grant the Tenants a monetary order in the amount of \$1,100.00. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

Conclusion

The Landlord's claims were partially successful. The Landlord established a claim for compensation in the amount of \$500.00 due to damage to flooring and for the filing fee.

I authorize the Landlord to keep \$500.00 from the security deposit and pet damage deposit of \$1,600.00. The Landlord is ordered to immediately return the balance of \$1,100.00 to the Tenants.

I grant the Tenants a monetary order in the amount of \$1,100.00. 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 9, 2019

Residential Tenancy Branch