



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FFL

Introduction

On August 16, 2018, the Landlords submitted an Application for Dispute Resolution seeking a monetary order for order for unpaid rent and damage 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

- Are the Landlords entitled to compensation for damage to the rental unit
- Are the Landlords entitled to compensation for loss or rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy lasted for two months. The tenancy began on August 1, 2017, and ended on September 30, 2017. The tenancy was for a one year fixed term tenancy. Rent in the amount of \$2,100.00 was due to be paid to the Landlord

by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,050.00. The Landlord provided a copy of the tenancy agreement; however, pages 3, 4, and 5 were not provided. The tenancy agreement addendum indicates the Tenant will pay a liquidated damages amount of \$1,093.00 if the Tenant terminates the tenancy prior to the end of the fixed term tenancy agreement.

The Landlord is seeking compensation in the amount of \$9,483.78 for the following items:

Carpet Cleaning	\$380.00
Molding Damage	\$450.00
Liquidated Damages	\$1,093.00
October 2017 Rent	\$2,185.00
Replacement Tenant	\$1,650.00
Stress and Suffering	\$650.00
Reputation Damage	\$3,500.00

Carpet Cleaning

The Landlord is seeking compensation of \$380.00 for the cost of carpet cleaning. The Landlord testified that the tenant failed to clean the carpet at the end of the tenancy. The Landlord testified that he cleaned the carpet himself and is looking to recover his time and effort for cleaning the carpet to remove an odor.

In reply, the Tenants testified that when they moved into the unit the carpet was not steam cleaned. They submitted that the previous Tenant had a pet and the carpet had an odor. The Tenants testified that there is no mention of a carpet issue on the condition inspection report and the Landlord returned the full security deposit to them.

Molding Damage

The Landlord is seeking compensation of \$450.00 for damage to a molding. The Landlord testified that a floor molding in the unit was damaged by the Tenants. The Landlord submitted a photograph of the molding. The Landlord testified that he replaced the molding and is seeking compensation. The Landlord submitted that replacement of the molding was completed along with replacement of a carpet. The Landlord does not have a receipt for the molding replacement. The Landlord provided two color photographs of a damaged molding.

In reply, the Tenants testified that the condition inspection report makes no mention of damage to a molding. The Tenants testified that they have provided photographic

evidence that shows the molding was damaged at the start of the tenancy. The Tenants submitted that the damage was caused by previous Tenants. The Tenants submitted that the replacement cost of the 30 inch molding is approximately \$8.00. The Tenants' pointed out that the Landlord does not have a receipt in support of his claim. The Tenants provided a photograph of the molding that they indicate was taken at the beginning of the tenancy.

Liquidated Damages

The Landlord testified that the tenancy agreement addendum contains a liquidated damages clause that requires the Tenants to pay the sum of \$1,093.00 if the Tenants terminate the tenancy before the end of the fixed term tenancy. The Landlord is seeking compensation in the amount of \$1,093.00.

In reply, the Tenants testified that they accepted the Landlord's suggestion that they could move out of the rental unit early. On August 5, 2017, the parties signed a mutual agreement to end the tenancy effective September 30, 2017.

The Landlord testified that the mutual agreement to end the tenancy contains language that all other terms on the tenancy agreement remain in force. The Landlord did not provide a copy of the mutual agreement.

The Tenants testified that the Landlord never mentioned a further penalty and they moved out with the understanding that there would be no penalty. The Tenants provided a copy of an agreement dated August 3, 2017, that indicates the Tenants' can give two weeks' notice to move out by September 30, 2017. The agreement indicates that all other terms and conditions on the lease agreement and addendum remain in force.

Loss of Rent and Tenant Replacement Claim

The Landlord is seeking compensation to recover a loss of rent and for the cost to find a replacement Tenant. The Landlord testified that when he received notice from the Tenants that they were ending the tenancy, he attempted to rent out the unit. The Landlord testified that he called the Tenants to arrange showings to prospective Tenants'; however, the Tenants did not return his calls. The Landlord testified that he could not show the unit until October 1, 2018, and suffered a loss of rent for October 2017.

In reply, the Tenant testified that the Landlord never contacted them to arrange showings. The Tenants point out that the Landlord has not provided any evidence to

support his suggestion. The Tenants' pointed out that the Landlord waited until mid-October to replace the carpet. The tenants provided photographs of the carpet taken at the start of the tenancy showing the carpet was stained at the start of the tenancy.

In reply the Landlord testified that he showed the unit to prospective Tenants' who mentioned an odor on the carpet so he replaced the carpet in the middle of October.

Stress and Suffering

The Landlord is seeking compensation of \$650.00 for stress and suffering. The Landlord testified that he is retired and he suffered stress for one month while trying to rent the unit out to a new Tenant.

In reply, the Tenants testified that the Landlord caused the stress himself.

Reputation Damage

The Landlord is seeking compensation of \$3,500.00 for damage to his reputation. The Landlord testified that when the Tenants' moved out of the unit they used all three elevators for moving their belongings. The Landlord submitted that this caused inconvenience for other occupants of the building. The Landlord testified that due to the Tenants' actions his reputation was affected to the extent that he decided not to run for a position on the strata council.

In reply the Tenants' testified that they did not use all three elevators. They submitted that they were charged \$200.00 for the use of the elevators which they disputed and received their money back. The Tenants submitted that the Landlord has had previous issues with Tenants in the building.

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:

Carpet Cleaning

The tenancy agreement and addendum provided by the Landlord does not contain any specific terms related to carpets.

The Residential Tenancy Policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

I accept the Tenants evidence that the carpet was stained at the start of the tenancy.

I find that the parties participated in a dispute resolution hearing on September 4, 2018, where the issue of the carpets was discussed. In the Decision dated September 26, 2018, the Arbitrator found that the Landlord acknowledged there was an issue regarding stains on the carpet that required maintenance.

I find that the Tenants are not responsible for the Landlords effort to clean the carpet. The Landlords' claim for \$380.00 is dismissed without leave to reapply.

Molding Damage

The Landlords claim for compensation of \$450.00 for replacement of a molding is dismissed without leave to reapply. I find that the molding is a transition strip of approximately three feet in length that separates the carpet from a wood floor.

I accept the Tenants' evidence that the molding had pre-existing damage at the start of the tenancy.

The Landlord has provided insufficient evidence that the Tenants are responsible for damage to the molding and that the value of his loss is \$450.00. I find that the Landlords claim for \$450.00 for a three foot piece of molding is excessive and frivolous as it has no sound basis.

Liquidated Damages

I find that the parties signed an agreement to end the tenancy which included language that the other terms of the tenancy agreement remain in force. I find that the Tenants signed the agreement. As such, I find that the liquidated damages clause of the tenancy agreement is enforceable against the Tenants.

I find that the Tenants ended the fixed term tenancy early. I grant the Landlord \$1,093.00 for the costs the Landlord incurred to re-rent the unit as a result of the Tenants decision to end the tenancy early.

Loss of Rent and Tenant Replacement

The Landlords' claims for compensation for a loss of rent and costs to find a new Tenant are dismissed without leave to reapply.

I find that the parties signed an agreement to end the tenancy where the Landlord permitted the Tenants to give two weeks' notice to end the tenancy. I do not accept the Landlord's submission that the Tenants prevented the Landlord from showing the rental unit. I find that pursuant to section 29 of the Act, the Landlord could have issued the Tenants a written notice of entry. There is no evidence before me that the Landlord issued a notice of entry to the Tenants and that the Tenants refused entry to the Landlord.

In addition, the Landlord has already claimed and was awarded compensation for liquidated damages for the cost to re-rent the unit.

I find that the Tenants are not responsible to compensate the Landlord for a loss of rent or Tenant replacement costs other than the award of liquidated damages.

Stress and Suffering

The Landlords claim for compensation for stress and suffering are dismissed. I find that the Tenants' actions during the tenancy were not egregious. The Landlord offered to end the tenancy, and the Tenants accepted the offer. I find that the Landlord's efforts with respect to ending the tenancy and finding a new Tenant are efforts that Landlords take on when doing business as a Landlord.

I find that the Landlord is not entitled to damages for any stress and suffering.

Reputation Damage

The Landlords claim for compensation for damage to his reputation is dismissed. Other than ending the fixed term tenancy early, I find that the Tenants have not breached the tenancy agreement or the Act. The Landlord has provided insufficient evidence that the Tenants' behavior when moving out has damaged his reputation. The Landlord has also failed to establish how his decision to not run for the strata council has a value of \$3,500.00.

I find that the Landlords claim for \$3,500.00 is excessive and frivolous as it has no sound basis.

Monetary Awards

The Landlord has established a monetary claim in the amount of \$1,093.00 for liquidated damages.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord's claim was partially successful, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$1,193.00. The monetary order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Landlord established the claim for compensation in the amount of \$1,193.00 due to liquidated damages and the cost of the filing fee.

The Landlord is granted a monetary order in the amount of \$1,193.00.

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: January 9, 2019

Residential Tenancy Branch