



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the landlord's application and all evidence on file.

In a related decision dated December 7, 2018, the landlord was ordered to return the tenants security deposit plus double the amount as a penalty. Therefore, the landlord's claim to retain the security deposit has already been conclusively determined and was not addressed again in this hearing.

Issues

Is the landlord entitled to a monetary award for damages?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began in 2011 and ended approximately 5 years later on November 30, 2016. The rental unit is a heritage house over 100 years of age.

The landlord submitted a “monetary order worksheet” which provides a breakdown of the landlord’s claims totaling \$4,068.00. The landlord’s submission as well as the tenant’s response to each of these items is summarized as follows:

Item #1 (\$525.00 for repair of a metal post and fence): The landlord testified the tenants built a trailer on the sundeck and damaged the fence while moving the trailer to the side of the garage. The landlord submitted an invoice for this repair work. The invoice is dated July 2018. The landlord submits that this was the date he was provided the invoice but the work was done in 2017.

The tenants denied causing any damage to the fence while moving the trailer. The tenants submit the fence was already falling over when they moved in and submit current photos which they allege shows the fence has still not been repaired.

Item #2 (\$3286.50 for an invoice for various renovation work): The landlord testified this work included carpet cleaning to remove pet odor, repairing/replacing blinds, replacement of damaged carpet in the living room and deck repairs. The landlord testified that the tenants removed blinds and put up curtains. The landlord submits that two of the blinds were damaged and two were never replaced and were missing. The landlord testified the tenants damaged the carpet in the living room and attempted to patch the carpet. The landlord testified the deck was damaged from the tenants building the trailer on it. The landlord submitted photos of the carpet damage, blinds and sundeck. The invoice submitted by the landlord is dated July 2017. The landlord testified the carpets were 4-5 years old but acknowledged they were not replaced during the tenancy.

The tenants testified that the paint was peeling from the sundeck from the outset of the tenancy. The tenants submit the landlord put treated pine floor which peeled easily and any damage was just normal wear and tear over the tenancy. The tenants submit there were not any blinds up in the rental unit when they moved in. The tenants submit the landlord did not complete any move-in or move-out condition inspection. The tenants submit the landlord has only submitted quotes and none of the work has actually been done. The tenants testified there was not damage to the carpet from their pet. The tenants submit the cleaned the carpet on move-out and they did not do any damage to the carpets.

Item #3 (\$257.00 for outstanding utilities): The landlord claims the tenants were responsible for paying 2/3 of the utilities under the tenancy agreement. The landlord submits the tenants failed to pay utilities for the last 3 months. The landlord testified that copies of the utilities bills were submitted as evidence however none are on file.

The tenants submit they were not provided copies of the alleged utilities bills. The tenants submit that the utilities were in their name through the duration of the tenancy and they paid the bills directly.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Item #1 (\$525.00 for repair of a metal post and fence): I find the landlord has submitted insufficient evidence of the condition of the fence at the start of the tenancy and that the damage was caused by the tenants versus pre-existing damage. Further, the invoice submitted by the landlord is dated July 2018 although the tenancy ended November 2016. I dismiss this part of the landlord's claim.

Item #2 (\$3286.50 for an invoice for various renovation work): The landlord provided insufficient evidence that the carpets were not left reasonably clean at the end of the tenancy. The only picture of the carpets was for the alleged damage. There was no move-out condition inspection conducted or report submitted. With respect to the blinds, I accept the tenant's testimony that no blinds were included in the tenancy. The landlord failed to provide sufficient evidence that blinds were provided and any condition inspection reports detailing the condition of the blinds at the start and end of the tenancy. With respect to the carpet damage, again the landlord failed to provide sufficient evidence that the alleged damage and repair attempt was caused by the tenants versus pre-existing. With respect to the sundeck, I find the damage claimed by the landlord to be just normal wear and tear of peeling paint throughout the tenancy. Additionally, the landlord failed to present sufficient evidence as to whether the alleged damage was pre-existing or caused by the tenants. This part of the landlord's claim is dismissed.

Item #3 (\$257.00 for outstanding utilities): The landlord failed to submit any bills in support of this claim. This claim is dismissed.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

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 14, 2019

Residential Tenancy Branch