



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, monetary compensation for unpaid rent and for the recovery of the filing fee paid for the application.

The Landlord and one Tenant were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence. The Landlord stated that the Tenants’ evidence was received a few days prior to the hearing but he confirmed that he had a chance to review the evidence and neither party brought up any additional issues regarding service.

Although evidence from the respondent must be served to the applicant at least 7 days prior to the hearing in accordance with the *Residential Tenancy Branch Rules of Procedure*, as the Landlord did not raise any concerns regarding the Tenants’ evidence and confirmed that he had received and reviewed it, I accept the evidence of both parties for consideration in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement that the tenancy started on November 1, 2017 and that monthly rent in the amount of \$450.00 was due on the first day of the month. The Tenant stated that they moved out on February 27, 2018 and the Landlord stated that the Tenants moved out in the first week of March 2018. The tenancy agreement was submitted as evidence and confirms the tenancy start date and monthly rent amount.

The Landlord has claimed \$6,048.00 for repairs required in one of the bedrooms of the rental unit. The Landlord stated that this includes repairs to the ceiling, insulation, walls and other repairs as required. He testified that the Tenants did not inform him of a roof leak that occurred during the tenancy which caused significant water damage and the presence of mould.

The Landlord also noted that the rental unit was left very dirty with other damage throughout, but that he has chosen to only pursue compensation for repairs to one room. The Landlord submitted into evidence a repair estimate dated October 7, 2018 which states refinishing of one room and provides a quote of \$6,048.00.

The Landlord stated that he believes that the Tenants were growing cannabis in the room, as evidenced by lightbulbs left behind which he included photos of. He also stated his belief that this is why the roof leak was not reported to him. The Landlord submitted that although this was an older rental unit, the condition was good at the start of the tenancy.

The Landlord stated that no move-in inspection was conducted. He also stated that he was not aware that the Tenants were moving out until after they had left so no move-out inspection was conducted. The Landlord submitted into evidence six photos of the

stove, oven and various areas of the rental unit that he stated were taken at the end of the tenancy.

The Tenant provided testimony that the rental unit was in poor condition when they moved in and that the Landlord was aware of issues caused from a leak in the roof as the leak and mould issues were present at the start of the tenancy. The Tenant submitted into evidence a witness statement from her co-tenant as well as a witness statement from her daughter. Both written statements were dated February 10, 2019 and note that when they moved in the rental unit was dirty, damaged from the water leak and that mould was present.

The Tenant stated that the rental unit was dirty at the start of the tenancy and submitted three photos that she stated show the presence of mould at the start of the tenancy. She noted that the rental unit was over 40 years old. The Tenant also stated that the light bulbs in the Landlord's evidence were present in the rental unit when they moved in which is why they left them in the rental unit at the end of the tenancy. The Tenant stated that they cleaned prior to moving out and left the rental unit in better condition than when they moved in.

The Landlord has also claimed for unpaid rent for January and February 2018 for a total of \$900.00. The Landlord included a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated January 13, 2018 which states that \$450.00 of rent was not paid as due on January 1, 2018.

The Tenant stated that she did not pay rent for January and February 2018 due to previous dispute resolution proceedings that were occurring. She referenced a previous decision submitted in her evidence and stated that the unpaid rent was taken into consideration when she was awarded a monetary order for \$300.00.

The decision, dated October 9, 2018 awards the Tenant \$300.00; \$200.00 as compensation for a broken furnace and \$100.00 as compensation for the purchase of oil for the furnace. The decision does not mention unpaid rent. Although the Tenant claimed two months of rent reduction in this previous proceeding, this was not awarded.

The Tenant also submitted a previous decision dated October 2, 2018 which was regarding a previous rental unit of the Landlord's that she resided in prior to moving to the rental unit that is the subject of this dispute.

The Landlord testified that the two months of unpaid rent had not been previously decided on and that he has not received any money towards the outstanding rent.

Analysis

Regarding the Landlord's claim for compensation for damages in the amount of \$6,048.00, I refer to the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test to determine if compensation is due as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

While the Landlord testified that one of the bedrooms required extensive repairs due to damage caused by a ceiling leak that went unreported by the Tenants, I am not satisfied that this damage was caused by the Tenants' breach of the *Act, Regulation* and/or tenancy agreement.

As stated in rule 6.6 of the *Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter, the Landlord bears the burden of proof.

While the Landlord stated that the damage occurred during the tenancy, the Tenant was not in agreement. The Landlord also stated that the water leaking issues were not reported during the tenancy while the Tenant stated that they were present at the start of the tenancy and the Landlord was aware.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the onus to provide sufficient evidence over and above their testimony to establish their claim. In this matter, I find that the Landlord did not provide sufficient evidence of the condition of the rental unit at the start of the tenancy that would establish that the damage occurred during the tenancy through the Tenants' actions.

Although the Landlord submitted photos from after the tenancy ended, I do not have enough information to confirm the condition of the rental unit at the start of the tenancy that would establish that the damage occurred during the tenancy, such as a move-in and move-out Condition Inspection Report.

As such, I find that the Landlord did not submit sufficient evidence to establish that the Landlord experienced a loss due to the Tenants breach of the *Act, Regulation* or tenancy agreement and that he should be compensated as a result. I decline to award the Landlord compensation for damages.

Regarding the claim for unpaid rent, I refer to Section 26 of the *Act* which states that a tenant must pay rent as due per the tenancy agreement. I accept the testimony of both parties as well as the tenancy agreement which confirms that rent in the amount of \$450.00 was due on the first day of each month.

The parties were in agreement that rent was not paid for January or February 2018. Although the Tenant claimed that this was taken into account in a previous Monetary Order awarded to her, both previous decisions submitted by the Tenant were reviewed and I do not find this to be the case.

Instead, I find that the Tenants breached Section 26 of the *Act* when they did not pay rent for January or February 2018 and therefore find that the Landlord is entitled to compensation in the amount of \$900.00 for unpaid rent.

As the Landlord was partially successful with the Application for Dispute Resolution, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

| | |
|--------------------------------|-------------------|
| January 2018 rent | \$450.00 |
| February 2018 rent | \$450.00 |
| Recovery of filing fee | \$100.00 |
| Total owing to Landlord | \$1,000.00 |

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of \$1,000.00 for rent owed for January and February 2018, as well as the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: February 28, 2019

Residential Tenancy Branch