



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On November 6, 2018, the Landlord filed an application to recover unpaid rent and /or utilities; for compensation for damage caused by the Tenant, and to keep the security deposit or pet damage deposit.

On January 23, 2019, the Tenants filed an application for the return of the security deposit.

Both parties appeared at the hearing. The Landlord’s agent (“the Landlord”) attended the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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 parties identified that they had participated in a previous dispute resolution hearing. On October 23, 2018, An Arbitrator ordered that the Landlord had 15 days to return the security deposit or make a claim to keep it by filing for dispute resolution.

The Landlords agent identified that the Landlord's name within the application is spelled incorrectly. The Landlord's agent requested to amend the application to the correct spelling. The Landlord's application is amended accordingly.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for a loss of rent?
- Is the Landlord entitled to compensation for damage and repairs?
- Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

The Parties testified that the tenancy began on December 1, 2017, on a month to month basis. Rent in the amount of \$1,100.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$500.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that she issued 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 2, 2018. The Landlord testified that the tenancy ended on March 10, 2018. The Tenants' testified that they moved out of the rental unit on February 22, 2018.

Landlords Claims

Loss of Rent \$1,100.00

The Landlord testified that on March 10, 2018, the Tenants notified her that they had moved out of the rental unit. The Landlord testified that she had issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2018 that was posted to the Tenants' door.

The Landlord testified that the Tenants did not provide her with proper written notice to end the tenancy.

The Landlord testified that the Tenants failed to pay the rent owing under the tenancy agreement for the month of March 2018.

The Landlord testified that the Tenants made it difficult for her to re-rent the unit; however, she found a new Tenant for April 1, 2018.

In reply, the Tenants testified that they moved out of the rental unit on February 22, 2018 and moved into a hotel. The Tenants testified that they did not pay the rent owing under the tenancy agreement for the month of March 2018, and did not provide the Landlord with the proper written notice to end the tenancy. The Tenants testified that the reason they moved out is because of inadequate heating that caused mold growth in the unit.

The Landlord testified that she was never notified by the Tenants of any mould issues. The Landlord testified that she cannot repair or deal with an issue she is not notified about.

Door Replacement Cost and Lockset Cost \$104.00 & \$20.00

The Landlord testified that the Tenant damaged a door in the rental unit using a hammer to pry open the door. The Landlord testified that the door and lockset was replaced. The Landlord is seeking to recover the replacement cost of the door and lockset.

The Landlord provided a photograph of a damaged door. The Landlord provided a receipt for the purchase of a new door and a lockset.

The Landlord testified that when the Tenants moved out of the rental unit they failed to return the keys to the door. The Landlord testified that the lock was changed. The Landlord is seeking to recover the cost of \$20.00 for a new lockset.

In reply, the Tenants testified that the door knob handle broke off the door. The Tenant testified that his child was outside and the weather was minus 20 degrees. The Tenant testified that he called the Landlord but could not wait for a response because his child was crying and there was no other way to get his child back into the unit. The Tenant testified that the other door was boarded up. The Tenant testified that he broke the door mechanism and damaged the door.

The Tenants testified that all the keys to the rental unit were left on the window sill in the Livingroom.

The Landlord replied that there were no keys found in the unit.

Door Installation and Lockset Labour \$179.20 & \$29.12

The Landlord is seeking to recover the cost of having the replacement door and lockset installed. The Landlord provided an invoice dated December 25, 2018, in the amount of \$179.20 for the five hours it took to replace the door, lockset, and repair the door frame.

The Landlord is also claiming \$29.12 for the cost to replace the lockset when the keys were not returned.

In replay, the Tenants testified that it took the Landlord awhile to attend the unit and the Landlord left a rag in the lockset hole for two weeks. The Tenants again testified that the keys were left in the unit.

Cleaning Costs \$168.00

The Landlord testified that the Tenants are responsible for leaving the rental unit unclean at the end of the tenancy. The Landlord testified that she hired a cleaning company to clean the stove, fridge, walls, shower and bedroom.

The Landlord provided photographs of some walls, shower, and stove taken at the end of the tenancy. The Landlord provided a receipt for the cost of having two cleaners clean the unit for five hours at \$15.00 per hour.

In reply, the Tenants testified that they did not go into one of the rooms because there was inadequate heat and it was not safe. The Tenants provided medical records that show Mr. D.M. attended the hospital in late January 2018, February 2018 and early March 2018 for sinus pain, headache and congestion.

The Tenants did not provide any further response to the Landlord's testimony regarding the condition of the rental unit.

Security Deposit \$500.00

The Landlord applied on November 6, 2018 to keep the security deposit of \$500.00 in full or partial satisfaction of her claims.

Tenants Application

The Tenants applied for the return of double the amount of the security deposit.

The parties participated in a previous hearing where the Arbitrator ordered the Landlord to deal with repaying the deposit or making a claim to keep it within 15 days of October 23, 2018.

Analysis

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

Landlord's Application

Loss of Rent

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

I find that the Tenants did not end the tenancy correctly. The Tenants chose to move out of the rental unit without giving the Landlord proper notice as required under section 45 of the Act. I find that the Tenants never notified the Landlord of an issue with mold in the unit and never gave the Landlord an opportunity to deal with any problem found before they decided to move out. There is insufficient evidence from the Tenants to establish that the Tenants symptoms were due to mold. In the circumstances, the Tenants did not have a legal right to end the tenancy on the basis of an emergency or on the basis of a breach on the part of the Landlord.

Pursuant to section 44 of the Act, the tenancy ended when the Tenants moved out; however, since the Tenants did not have a legal right to end the tenancy early, the Tenants remain responsible to pay the rent until the earliest time that the Tenant could legally have ended the tenancy. I find that the Tenants are responsible to pay the rent for the month of March 2018.

I grant the Landlord compensation in the amount of \$1,100.00 for March 2018 rent.

Door Replacement Cost and Lockset Cost and Labour Costs

Section 37 of the Act provides that when a Tenant vacates a rental unit the Tenant must give the Landlord all the keys that are in the possession of the Tenant that allow access to and within the residential property.

I find that the Tenants are responsible for damaging the door and for the replacement cost and labour to repair the jam and install the door and lockset. While I accept that the Tenants may have believed it was an emergency situation, I find that they remain responsible for the damage caused.

I find that the Tenants did not give the keys to the Landlord. The Tenants allegedly left the keys in the unit. I find that there is insufficient evidence from the Tenants that they gave the keys to the Landlord.

I grant the Landlord the amount of \$332.32 for the door replacement and lockset costs.

Cleaning Costs

The Landlord provided the better evidence that the rental unit was left unclean. I find that the Tenants moved out of the unit without notice and left the unit unclean and are responsible to reimburse the Landlord for her costs to have the rental unit cleaned.

I award the Landlord the amount of \$168.00 for cleaning costs.

Security Deposit

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that on November 6, 2018, the Landlord applied for dispute resolution making a claim to keep the security deposit. I find that the Landlord's application was made within 15 days of October 23, 2018, the date ordered by a previous Arbitrator.

Since the Landlords application was made within 15 days, the security deposit does not double as a penalty and the deposit will be use to set off any successful awards granted to the Landlord.

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 successful with her application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord has established a claim for compensation in the amount of \$1,700.32.

After applying the \$500.00 security deposit towards the Landlord's claim of \$1,700.32, I grant the Landlord a monetary order in the amount of \$1,200.32. This monetary order must be served on the Tenants and may be enforced in Provincial Court.

Conclusion

The Landlord was successful with her claims against the Tenants for damage and cleaning costs.

The Tenants failed to end the tenancy in accordance with the *Act* and are responsible to compensate the Landlord for a loss of rent.

The Landlord is granted a monetary order in the amount of \$1,200.32.

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: March 20, 2019

Residential Tenancy Branch