



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlords applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement; to keep all or part of a pet damage deposit or security deposit; and to recover the cost of the application fee.

The Tenants applied for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement; for the return of the security deposit and or pet damage deposit; and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. 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. The parties confirmed that they exchanged the documentary evidence that I have before 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 Tenants raised a concern about documentary evidence that was received from the Landlord past the deadline. The Tenant testified that registered mail notification was received on November 15, 2018, and the evidence was picked up on November 19,

2018. The Tenants testified that they had an opportunity to consider and respond to the evidence.

I find that the Tenants had sufficient time to consider the Landlord's evidence and the evidence is accepted.

Issues to be Decided

- Are the Landlords entitled to compensation due to money owed or damage or loss under the Act, Regulation, or tenancy agreement?
- Are the Tenants entitled to compensation for money owed or damage or loss under the Act, Regulation, or tenancy agreement?
- Can the Landlords keep the security deposit in partial satisfaction of the claims?
- Are the parties entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 15, 2015, as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,650.00 was due by the first day of each month. The Tenants paid a security deposit of \$825.00 to the Landlord.

The Landlords and Tenants testified that the Tenants moved out of the rental unit on July 1, 2018.

Landlord's Application

Loss of Rent \$1,700.00

The Landlord is seeking compensation for a loss of July 2018, rent in the amount of \$1,700.00. The Landlord testified that the Tenants failed to vacate the rental unit at noon on July 1, 2018. The Landlord testified that his contractor could not perform work required in the unit and had to postpone it until the first week of August. The Landlord testified that rent was due to increase from \$1,650.00 to \$1,700.00 on July 1, 2018.

In reply, the Tenants testified that there was no furniture remaining in the unit on July 1, 2018, that would impede the Landlord's ability to perform repairs. The Tenants testified that the Landlord did not schedule a move out inspection so they contacted the Landlords on July 2, 2018, and the Landlord asked them to return to the unit on July 2, 2018, for a move out inspection walkthrough.

The Landlord confirmed that he did not perform a move in inspection with the Tenants.

The Landlord testified that his contractor was going to remove walls and erect a new wall and create a new washroom.

The Landlord testified that they were not going to be able to rent the unit out for July 2018; however, the Landlord feels the Tenants actions delayed the construction.

Damage to Rental Unit \$1,200.00

The Landlord testified that the walls of the rental unit were left damaged. The Landlord testified that the Tenants did not sand or paint over the patches in approximately fifty locations. The Landlord testified that he hired a contractor to sand the spots and paint the walls. The Landlord testified that the rental unit was last painted in 2011. The Landlord is seeking to recover the cost of \$630.00.

The Landlord testified that a plumber looked at a countertop due to a water leak and recommended that the countertop be replaced. The Landlord replaced the countertop and provided a receipt. The Landlord testified that the old countertop was from 2003. The Landlords are looking to recover the amount of \$600.00. the Landlords provided a couple photographs of the countertop.

The Landlord withdrew the claim to be compensated for window blinds.

In reply, the Tenants testified that the Landlord instructed them to fill the holes with putty. The Tenants testified that the Landlord did not instruct them to paint. The Tenants testified that the rental unit was last painted in 2011.

With respect to the countertop, the Tenants testified that the bathroom was in poor condition at the start of the tenancy. The Tenants testified that the Landlord was renovating the unit and was replacing older items.

Tenant's Application

Security Deposit

The Tenants are seeking the return of double the security deposit in the amount of \$1,650.00. The Tenants testified that they provided the Landlord with their forwarding address in writing sent by registered mail on July 3, 2018, and requested the return of the security deposit.

The Tenants testified that the Landlord failed to perform a move in inspection of the rental unit at the start of the tenancy.

In reply, the Landlords acknowledged that they received the Tenants forwarding address sent on July 3 2018 and they did not return any amount of the security deposit to the Tenants.

The Landlords applied for dispute resolution on July 17, 2018, which included a claim against the security deposit.

Compensation For Loss \$5,000.00

The Tenants are seeking compensation due to a number of actions taken by the Landlord that they feel amounts to harassment. The Tenants submitted that after they informed the Landlord they were expecting a child, the Landlord proposed a rent increase. The Tenants submitted that they informed the Landlord that the proposed increase was above the allowable amount and the Landlord responded by telling them to accept the rent increase or else the Landlord will evict them. The Tenants did not accept the proposed rent increase.

The Tenants submitted that the Landlord issued them a 2 Month Notice To End Tenancy For Landlord's Use Of Property in April 2018. The Tenants accepted the 2 Month Notice and moved out of the rental unit.

The Tenants testified that the Landlords do not understand the rights and responsibilities in a Landlord and Tenant relationship. The Tenants provided testimony as follows:

- On April 23, 2018 the Landlord entered the unit without giving proper notice.
- The Landlord threatened to remove the Tenants parking privileges.
- The Landlord called the Tenants lazy in a text message.

The Tenants submitted that the Landlord violated section 29 of the Act by requesting to enter the unit with less than proper notice. The Tenants clarified that they did permit the Landlord to enter the unit without proper notice on a couple of occasions; however, they felt pressured to do so. The Tenants submitted that there were times when they did not agree with entry and protested by saying they will need more notice in the future.

The Tenant submitted that this harassment caused mental distress while in the final stages of her pregnancy.

In reply, the Landlord testified that the Landlords relationship with the Tenants was amicable despite the submissions being made by the Tenants.

With respect to the requests to enter the rental unit, the Landlord testified that they asked to enter to accommodate contractors who were already on the property doing other work.

With respect to the proposed rent increase, the Landlord testified that they informed the Tenants that they were going to proceed with renovations on the unit and the Tenants responded by saying that the timing was bad for them and they asked for a compromise. The Landlord suggested a rent increase and the Tenants responded that the amount of the increase was not reasonable. The Landlord issued a 2 Month Notice To End Tenancy For Landlord's Use Of Property for renovation of the unit.

The Landlord testified that a rent increase was never issued or applied, it was just proposed.

With respect to entry of the unit, the Landlord testified that they requested entry, without issuing 24 hours notice and the Tenants agreed. The Landlord submitted that they never entered the unit without the permission of the Tenants.

Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. If a Landlord fails to perform an inspection the Landlord right to claim against a security deposit is extinguished.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

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.

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.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides:

The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The Residential Tenancy Policy Guideline #40 Useful Life of Building Elements provides that when applied to damage(s) caused by a Tenant; the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the useful life of interior paint is four years.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Landlord's Claims

Loss of Rent

I find that the Tenants are not responsible for the any loss of July 2018, rent. The Landlords planned to renovate the rental unit in July 2018 which included removing walls, erecting a new wall, and creating a new washroom. I find that the renovation was substantial and it is not possible that the renovations would have been completed to allow rental of the unit in July 2018. I also accept that the Tenants had the majority of their possessions moved out and that the Landlord asked the Tenants to return to the unit on July 2, 2018 for an inspection.

The Landlords claim for a loss of rent in the amount of \$1,700.00 is dismissed.

Damage Claims

Sanding and Painting

The parties were in agreement that the interior walls of the unit were last painted in 2011. I find that the Landlord is responsible to periodically repaint the interior of the rental unit and that the interior paint was beyond its useful life of four years. I find that the Landlord is responsible for the painting costs. I find that the Tenants are

responsible for the patching and sanding of holes in walls. I find that the Tenants filled the holes with putty; however, based on the photographs provided by both parties, I find that the patches were not sanded. I find that the Tenants are responsible for the cost to sand the patches.

I find that the majority of the Landlords cost of \$630.00 would be for the cost to paint the walls. For this reason, I find it reasonable to award the Landlord a small percentage of the amount being claimed to cover their cost of sanding the patches.

I award the Landlord a nominal amount of \$100.00 for the effort to sand the wall patches. The remainder of the Landlords claim is dismissed.

Countertop Replacement \$600.00

I find that there is insufficient evidence from the Landlords to prove that the 15 year old countertop needed to be replaced due to damage or intentional neglect caused by the Tenants.

The Landlords claim for the cost to purchase a new countertop is dismissed.

Tenant's Claims

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 the Landlord applied for dispute resolution and made a claim against the security deposit within 15 days of receiving the Tenants' forwarding address in writing; however, the Landlord had already extinguished his right to claim against the deposit for damage when the Landlord failed to perform a move in inspection with the Tenants.

I find that the Landlord must return the security deposit of \$825.00 to the Tenants. I award the Tenants the amount of \$825.00.

Compensation for Damage or Loss

An arbitrator may award monetary compensation only as permitted by the Act or the common law. If a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

I have considered the Tenants submissions that the Landlord breached the Act and harassed the Tenants. I find that there is insufficient evidence from the Tenants to prove that the Landlords breached the Act. Since the Tenants permitted entry of the Landlord into the unit, I find there was no breach of section 29 of the Act.

I also find that the Landlord never breached the Act by issuing an illegal rent increase. I find that a proposal was made by the Landlord and the parties never reached an agreement. A rent increase was never applied.

The Tenants accepted the 2 Month Notice, and moved out rather than disputing the Notice; therefore, there was no hearing to determine whether or the Notice was issued in good faith. I find that the Landlords did not breach the Act by issuing the 2 Month Notice.

While I accept that the Tenants were bothered by comments made by the Landlord, I find that other than the Landlords' failure to perform a move in inspection, there is no breach of the Act, Regulation, or tenancy agreement on the part of the Landlord.

The Tenants claim for compensation in the amount of \$5,000.00 is dismissed.

Awards

The Tenants are awarded the amount of \$825.00 for the return of the security deposit.

The Landlords are awarded the amount of \$100.00 for the cost of repairs.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants had some success in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

After setting off the amounts of the awards, I grant the Tenants a monetary order in the amount of \$725.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords were partially successful with a claim for repairs. The Landlords claims for a loss of rent and the replacement cost of a countertop are dismissed.

The Tenants were successful in their claim for the return of the security deposit. The Tenants claim for compensation for harassment is dismissed.

After setting off the amounts awarded to each party, I grant the Tenants a monetary order in the amount of \$725.00. This monetary order must be served on the Landlords and may be enforced in 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: April 11, 2019

Residential Tenancy Branch