



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they had received each other’s evidence packages.

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 under the *Act*?
- Is the Landlord entitled to retain the security and pet damage deposits for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on November 11, 2017, as a six-month fixed term tenancy that rolled into a month to month at the end of the initial fixed term. Rent in the amount of \$1,200.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$600.00 and a pet damage deposit of \$100.00 at the outset of this tenancy.

Both the parties agreed that the Tenants gave their notice to end their tenancy to the Landlord on October 31, 2018, and that the Tenants moved out in accordance with that notice on November 30, 2018. Both the Landlord and the Tenants testified that the move-out inspection was conducted on November 30, 2018.

The Landlord testified that during the move-out inspection she had detected a smell in the rental unit coming from the fridge and that it had smelled like food had been left to rot in the fridge. The Landlord testified that the smell had been so bad that it had destroyed the fridge and that the fridge had to be replaced. The Landlord testified that she had her boss and a professional attend the rental unit and take a look at the fridge and that both had told her the fridge needed to be replaced. When asked, the Landlord testified that she did not know any damage in the rental unit before the move-out inspection.

The Landlords testified that she put a down payment on the purchase of a used fridge on December 9, 2018, and that the fridge was delivered in January 2019. The Landlord also testified that she was not able to re-rent the rental unit in December 2018 due to there not being a fridge in the unit. The Landlord claims that the Tenants damaged the fridge when they unplugged it and allowed food to rot inside. The Landlord is requesting \$1,200.00 for the recovery for the lost rental income for December 2018, and \$400.00 for the replacement cost of another fridge. The Landlord submitted a copy of the bill of sale for the purchase of a replacement fridge for the rental unit, into documentary evidence.

When asked the Landlord testified that she did not attempt to advertise the rental unit as available for rent and conducted no showing of the rental unit during the notice period, between October 31, 2018, to November 30, 2018. The Landlord also testified, when asked, that she did not know the exact age the fridge that had been in the rental unit during the Tenants tenancy, as she had purchased it used; however, she believed it to have been manufactured sometime in the early 2000s.

The Tenants agreed that there had been a small order coming from the fridge, due to the fridge being unplugged and cleaned out. The Tenants testified that they believed the fridge just need to be plugged back in, and a box of baking soda placed inside, and the smell would have gone away. The Tenants disagreed that the fridge needed to be replaced and that the rental unit was not able to be re-rent due to the smell in the fridge.

The Tenants testified that they had offered the Landlord \$200.00 towards the replacement costs of a new fridge, in the hope to prevent this matter from ending up in a hearing with the Residential Tenancy Branch. However, the Landlord had refused their offer, and that their offer is now off the table. The Tenants testified that they did not damage the fridge and that the fridge did not need to be replaced.

The Tenants also testified that the Landlord made no attempt to find a new renter for the rental unit for December 2018, and they ended their tenancy legally, and they do not owe the Landlord rent for December 2018.

The Landlord testified that the Tenant had returned the stove dirty at the end of the tenancy and that it had taken her an hour of her time to clean the stove. The Landlord is requesting \$25.00 for an hours' worth of her time to clean the stove in the rental unit. The Landlord testified that the dirty stove was not recorded on the move-out inspection as she had not noticed during her inspection. The Landlord submitted three pictures of the stove, and a typed invoice for her labour cost into documentary evidence.

The Tenants testified that they had returned the rental unit clean to the Landlord and that there may have been a small spot that they missed in their cleaning of the rental unit but that there was no way the place needed another full hour of cleaning. The Tenants testified that they had looked at the Landlord's pictures of the stove, submitted into evidence, and what they saw was a clean stove with one small spot that, even if they had missed cleaning it, would take at most, 10 minutes to clean. The Tenants testified that the Landlord's request for an hours' worth of cleaning time was unreasonable and that as far as they knew the stove was clean when they returned the property to the Landlords on November 30, 2018.

Additionally, the Tenants testified that when the Landlord contacted them, several days after the move-out inspection, and told them of the dirty spot on the stove, they had offered to come back and clean it; however, the Landlord had refused to allow them to come back and clean the spot.

The Landlord testified that the Tenant's cat had damaged the walls in the rental unit during the tenancy and that it had cost \$100.00 in labour and supplies to repair the damage. The Landlord submitted a copy of the bill of sale for the purchase of a gallon of paint, a pint of trim, wall putty and an invoice for two hours of her time for labour to repair the walls into documentary evidence. The Landlord also submitted four pictures of the walls in the rental unit into documentary evidence.

The Tenants testified that there had been some small scratches on the wall at the end of the tenancy but that they had filled them in with putty before they left. The Tenants testified that the Landlord had told them she had some paint leftover from when she last painted the rental unit, so they did not attempt to paint the areas of the wall that they had repaired in the rental unit.

The Tenants testified that they had offered \$50.00 to the Landlord to cover the cost of the paint and the Landlord's time to repaint the small areas that they had repaired, but the Landlord had refused their offer. The Tenants testified that they believe the Landlord's claim for \$100.00 is too much given they had already repaired the damage and it was just two small areas that required a touch up in paint, which the Landlord had told them she had the paint.

The Landlord testified that when she purchased the paint to repair the patched areas, the colour did not match and she had to re-paint the entire area.

Analysis

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

Section 45(2) of the *Act* states that a tenant can end a periodic tenancy agreement by giving the Landlord at least one full rental period's written notice that they intended to end the tenancy.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I find that the Landlord received the Tenants' notice to end the tenancy on October 31, 2018. Based on when the Landlord received the Tenants' notice, and on the agreed upon date that the Tenants moved out, I find that this tenancy ended, in accordance with the *Act*, on November 30, 2018.

The Landlord claims that she was unable to rent the rental unit for December 2018 due to damage to the fridge, caused by the Tenants, and is requesting to recover her lost rental income for December 2018, in the amount of \$1,200.00.

Awards for compensation are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- 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.

I accept the testimony of the Landlord and the Tenants that the Landlords did not make any attempts to advertise or show the rental unit to new renters in November or December 2018. I also accept the testimony of the Landlord that she had known that the Tenants were ending their tenancy for four weeks before they moved out and she

had had no idea during those four weeks that there was any damage to the rental or any reason why the rental unit could not have been re-rent for December 1, 2018.

I find that the lack of an attempt, by the Landlord to re-rent the rental unit during the notice period, shows that on a balance of probabilities the Landlord had no intention of renting the unit out for December 2018. As the Landlord had no intention of renting the rental unit for December 2018, I find that there was no loss in rental income for that period. Consequently, I dismiss the Landlord's claim for the recovery of the loss of rental income for December 2018, in the amount of \$1,200.00.

The Landlord has also requested compensation to recover the costs for cleaning the stove at the end of the tenancy, in the amount of \$25.00. During the hearing, I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the stove at the end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The move-in/move-out inspection report (the "inspection report") is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. I accept the testimony of the parties to this dispute that they were both in attendance when the inspection report was completed on November 30, 2018.

I have carefully reviewed the inspection report, and I noted that there is no mention of the need for additional cleaning for the stove in the rental unit. I have also reviewed the pictures submitted into evidence by the Landlord and find that the dirt depicted in these pictures should have been easily detectable during the inspection, had the Landlord conducted a thorough inspection of the rental unit. I also noticed that the pictures submitted into evidence by the Landlord were taken on December 3, 2018, three days after the tenancy had ended.

Given that the inspection report recorded that the stove was clean at the end of the tenancy and that the pictures of the stove are dated three days after the tenancy ended, I find that it is if the dirt depicted in these pictures happened during the tenancy. Therefore, I dismiss the Landlord's claim for the recovery of \$25.00 in labour cost to clean the stove.

Finally, the Landlord has requested to recover \$100.00 in her costs to repair scratches to two walls in the rental unit. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

Landlord and tenant obligations to repair and maintain

32 (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I have reviewed the picture of the walls, entered into evidence by the Landlords, and I find that they depict two walls that have been scratched. However, I also find that the pictures show that the scratches have been filled with wall putty. Based on the picture evidence submitted by the Landlord, I find the Tenants' testimony to be credible, that they had repaired the scratches to the wall.

I find that the Tenants complied with section 32(3) of the *Act* when they repaired the walls of the rental unit before the tenancy ended. As there has been no breach of the *Act* by the Tenants, I must dismiss the Landlord's claim for \$100.00 to repair the walls.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in her application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for her application.

I order the Landlord to return security deposit and pet damage deposits, in the amount of \$700.00, that she is holding for this tenancy to the Tenants within 15 days of receiving this decision.

I grant permission to the Tenants to file for the return of double their security deposit and pet damage deposit if the Landlord does not comply as ordered.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the security deposit and pet damage deposits to the Tenants within 15 days of receiving this decision.

I grant permission to the Tenants to file for the return of double their security and pet damage deposits if the Landlord does not comply as ordered.

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 3, 2019

Residential Tenancy Branch