



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

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

- a monetary order for compensation for unpaid rent and damage 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 her 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, to present evidence and to make submissions. No issues were raised with respect to the service of the application and respective evidence submissions on file.

Preliminary Issue – Clarification of Landlord's monetary claim

The landlord's original application indicated a monetary claim of a total of \$2600.00 comprise of \$600.00 for unpaid rent and \$2000.00 for damages. The landlord served the tenants with an evidence package and monetary order worksheet two weeks prior to the hearing. The monetary order worksheet included new claims for rental loss due to repair timeline and storage. The monetary claim for damages was also well in excess of \$2000.00. The landlord did not file an Amended Application to include the new claims or revised monetary amount nor were the tenants served with any amended application.

As such, I have limited the landlord's claims to the issues and monetary amounts identified in the original application.

Issues

Is the landlord entitled to a monetary award for compensation for unpaid rent and damage?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background & Evidence

This tenancy began on June 1, 2016. The monthly rent was \$2350.00. The tenants paid a security deposit of \$1175.00 at the start of the tenancy which the landlord continues to hold. On November 28, 2018 the tenants provided written notice to end the tenancy effective December 31, 2018. A move-in condition inspection report was completed upon move-in. A move-out condition inspection report was not completed.

The landlord's agent is claiming the tenant occupied the home until January 6, 2019 when the keys were returned and a walk through was completed. The landlord's agent is claiming \$454.00 as prorated rent for the period of January 1-6 (revised from the original \$600.00 claim).

The landlord's agent is claiming the tenants caused damage including cracked floor tiles, heavily stained carpets and holes in the walls. The landlord submitted various pictures which included pictures of a cracked floor tile, stained carpets, chips in the paint and holes in the drywall. The landlord submitted an invoice which is only an estimate of the repair work required. The landlord also submitted a receipt for the carpet cleaning charge which also included dumping of debris left behind by the tenants. The landlord also submitted text messages which he alleges support the tenant accepting responsibility for the damage.

The landlord's agent testified he was away for work at the end of the tenancy; therefore, he gave his daughter the latitude to deal with the move-out procedures.

The tenant testified that he vacated the rental unit December 31, 2018 but he just didn't complete the cleaning of the unit by this date. The tenant testified that the cleaner he had arranged backed out on him. The tenant testified that he then cleaned the unit himself including shampooing the carpets. The tenant testified that he requested extra time from the landlord's agent and he was done the cleaning on January 1, 2019. The tenant testified the move-out walk through was originally scheduled for January 3, 2019

but was then rescheduled for January 6, 2019. The tenant submitted text message correspondence in support.

The tenant testified that the move-in inspection was done by the landlord's agent's wife. The tenant submits that the move-in report provides very little detail and most comments just say "yes".

The tenant acknowledged that some stains on the carpets may have been caused by his children but argues that the carpets were badly stained on move-in. The tenant testified that he spent a day cleaning all the carpets with a shampoo machine he rented.

The tenant disputes causing any damage to the walls with the exception of a hole in the entry caused by the front door handle.

The tenant acknowledged leaving belongings behind in the rental unit but testified that he had offered to pick them up on a couple occasions.

The tenant argues that the landlord did not provide any quote for the alleged damage until well after the fact and the landlord has not submitted any proof that it was caused by the tenants. The tenant submits that the landlord's agent was not even present for the walk through himself but instead he sent his daughter who did not even complete a walk through inspection report. The tenant testified that the agent's daughter agreed to return the full security deposit after the walk through inspection and even mailed a cheque for the full amount which the agent later put a stop payment on.

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.

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.

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord

must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

Although the landlord did originally send a cheque for the full amount of the security deposit, I find the landlord was within his right to put a stop payment on that cheque and the landlord subsequently filed this application with 15 days of the end of the tenancy. Further, although the landlord's right to claim against the deposit for "damages" was extinguished as he failed to complete a move-out condition inspection report as per section 36 of the Act; the landlord was still entitled to claim against the deposit for the unpaid rent portion of the claim.

With respect to the landlord's claim for unpaid rent for January 1-6, 2019, I find the evidence supports that the tenant was ready for the move-out inspection as early as January 2, 2019. The tenant acknowledged the unit had not been cleaned and he requested more time to do so. The text messages support that the tenant advised the landlord he was finished the cleaning and ready for walk through on January 2, 2019. Although the tenant may still have had belongings left in the unit past this date does not automatically equate to rent being payable for this time. The landlord could have mitigated any potential loss of rent by placing items in storage. I find the landlord has established an award for 2 days occupancy rent in the amount of \$151.61 ($\$2350.00/31 \text{ days} \times 2 \text{ days}$).

The move-in condition report on file is very lacking in detail. Majority of the sections of the report are either blank or are filled in as "yes". The comments provide very little details with respect to the condition of the rental unit. A couple comments indicate pre-existing chips in the walls and/or trim and a hole in the ceiling. The landlord failed to complete a report during the move-out inspection. With the exception of some stains on the carpets, some items left behind and a hole in the entry wall, the tenant disputed the remainder of the landlord's claims. The burden of proof is on the person making the claim to prove it on a balance of probabilities. I find the landlord has not met this burden. The landlord has failed to prove on a balance of probabilities that the tenants caused the damage to the tile. I also find that much of the damage to the walls as well as the stained carpets was pre-existing. I find the landlord did suffer some loss for damages acknowledged by the tenant which include some, not all, stains on the carpets, one hole in the wall and the removal of items left behind. As the loss for these items is difficult to quantify, I award the landlord the nominal amount of \$250.00.

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

Total entitlement for Landlord: \$401.61 (\$250.00 + \$151.61)

The landlord continues to hold a security deposit in the amount of \$1175.00. The landlord is permitted to retain \$401.61 from this security deposit in full satisfaction of the monetary award and the balance of \$773.39 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$773.39.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$773.39. Should the landlord 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: April 17, 2019

Residential Tenancy Branch