



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FFL

Introduction

On February 01, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss and a monetary order for unpaid rent.

The matter was set for a conference call hearing. The Landlords and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. 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.

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

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to other compensation for damage or loss?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2016, and is on a month to month basis. Rent in the amount of \$1,500.00 was to be paid by the first day of each month. The parties did not agree on the date the tenancy ended. The Landlord

testified that the tenancy ended on January 7, 2019. The tenant testified that the tenancy ended on January 1, 2019.

There is no written tenancy agreement. The Landlord failed to prepare a tenancy agreement in writing.

The Landlord is seeking compensation for the following items:

Loss of Rent	\$6,000.00
Cleaning Supplies	\$53.23
Disposal of garbage	\$214.00
New Stove	\$392.00

Loss of Rent \$6,000.00

The Landlord is seeking to recover rent for the months of November 2018, December 2018, and January 2019. The Landlord is also seeking to recover rent for the first month of the tenancy which he submitted was given to the Tenant at no cost in exchange for the Tenant agreeing to paint the house.

In reply, the Tenant testified that he paid the full rent for the above mentioned months to the Landlord in cash. The Tenant testified that the Landlord did not provide him with a receipt for the rent payments.

The Tenant testified that he did not pay January 2019 rent because he moved out of the rental unit on January 1, 2019. The Tenant testified that he provided the Landlord with verbal notice that he was moving out and the Landlord agreed that he could move out early. The Tenant testified that an occupant named Holly moved into the unit on January 1, 2019. The Tenant submitted that he was making arrangements to have the rental unit painted before he moved out when the Landlord told him that the new Tenant wanted to paint it her own color.

In reply, the Landlord provided testimony confirming that the Tenant always paid the rent in cash and the Landlord did not issue the Tenant any rent receipts. The Landlord testified that he would accept the cash and sometimes deposit the payment in the bank or spend it. The Landlord did not provide any documentary bank evidence showing a record of deposits of rent.

The Landlord testified that Holly moved into the rental unit and painted the unit in exchange for moving in. The Landlord testified that he did not give the Tenant permission to move out early on January 1, 2019.

Cleaning Supplies \$53.23

The Landlord testified that the Tenant left the rental unit unclean at the end of the tenancy. The Landlord testified that he needed to purchase cleaning supplies for the unit. The Landlord is seeking to recover the cost of \$53.23 for the cost of cleaning supplies. The Landlord provided a receipt in the amount of \$53.23.

In reply, the Tenant testified that he left the rental unit clean. He testified that he swept and mopped and cleaned the refrigerator. The Tenant submitted how could the Landlord paint the unit on January 1, 2019 if the rental unit was left unclean.

Disposal of Garbage \$214.00

The Landlord testified that the Tenant left garbage and refuse on the property at the end of the tenancy. The Landlord is seeking to recover the amount of \$214.00 for the cost of taking the garbage to the dump facility and disposal of it. The Landlord provided photographs of the garbage, furniture, weight training equipment, and used painting supplies left behind and provided a receipt for the disposal cost.

In reply, the Tenant testified that he accepts 1/3 responsibility for the disposal cost. He testified that other occupants of the rental property use the garbage bin. He testified that a previous occupant left garbage including an old couch that was left on the property for two years. The Tenant submitted that he intended to dispose of his garbage on January 3, 2019 but he was not able to which created an argument with the Landlord.

In reply, the Landlord provided testimony acknowledging that there are three suites on the rental property that use and have access to the garbage bin. The Landlord maintains that all the garbage belonged to the Tenant.

New Stove \$392.00

The Landlord testified that he purchased a new stove for the rental unit and is seeking compensation of \$392.00 from the Tenant. The Landlord testified that in July 2018 he permitted the Tenant to reduce the rent in the amount of \$350.00 in exchange for the Tenant putting in a new stove. The Landlord testified that the tenant did not put in a new stove. The Landlord testified that the original stove was in working condition and was approximately 10 years old.

In reply, the Tenant testified that at the start of the tenancy only two elements on the stove worked and the stove did not always work. The Tenant testified that he did not agree to replace the stove because the stove is a gas stove and a technician is needed to change the stove. The tenant testified that he believes the original stove is 25 years old.

Analysis

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Loss of Rent

The burden of proving a loss is on the person who is claiming compensation for the loss. With respect to the Landlord's claim for unpaid rent in the amount of \$6,000.00, the burden of proving that rent was not paid rests with the Landlord.

Section 26(2) of the Act provides that a Landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has not been made. When a Landlord provides receipts for cash payments there is an expectation that a Tenant will be able to produce a receipt for every cash payment that has been made. When a Tenant is unable to provide a receipt for an alleged payment, it lends credibility to a Landlord's claim that a cash payment has not been made.

In the circumstances before me, the Landlord and Tenant testified that the Landlord never provided rent receipts for the cash rent payments. The Landlord's failure to provide receipts during this tenancy has impaired his ability to prove whether or not the Tenant paid the rent. The Landlord did not submit any other documentary evidence, such as a copy of a payment ledger, or banking records showing a history of deposits to corroborate his claim that the Tenant did not pay the rent.

When both parties provide equally believable testimony the Landlord the burden of proof is on the applicant. I find that the Landlord breached section 26(2) of the Act by failing to provide rent receipts to the Tenant. The Landlord has provided insufficient evidence to prove his loss. The Landlord's claim for a loss of rent for November 2018 and December 2018 are dismissed.

With respect to January 2019, rent, I find that the Tenant did not provide proper written notice to end the tenancy as required under section 45 and 52 of the Act. While I find

that the Tenant is responsible for any loss of rent suffered by the Landlord for January 2019, I find that the Landlord permitted a new Tenant to move into the rental unit in exchange for painting the unit. I find that the Landlord benefitted from this arrangement and I find that the Landlord was compensated by this arrangement of work in exchange for free rent. I find that the Landlord has not suffered a loss of rent for the month of January 2019. The Landlords claim for January 2019 rent is dismissed.

With respect to the Landlords claim to recover the free months' rent in exchange for painting, the Landlord did not provide any written agreement documenting the terms of the agreement. There was no testimony on when the work was to be started or completed. I accept that there was an oral agreement of painting in exchange for a month's free rent. I accept the Landlord's testimony that the Tenant received a free month's rent but did not paint the interior of the rental unit. I find that the Tenant was prepared to honor the agreement by having the unit painted prior to moving out. The Tenant submitted that the Landlord told him the new Tenant was going to paint the interior of the unit. The Landlord did not provide any testimony confirming whether or not he told the Tenant not to paint because the new Tenant wanted to paint and choose her own colors.

I find that the Landlord unilaterally changed the terms of the oral agreement. In the absence of evidence that the Tenant was informed and an agreement reached by both parties that the Tenant would be responsible to compensate the Landlord for the free month's rent, I find that the Landlord is not entitled to compensation. The Landlords claim to recover a month of rent is dismissed.

Cleaning Supplies \$53.23

The Landlord's claim to recover the cost of cleaning supplies is dismissed. The Tenant testified that the rental unit was left in a clean condition. The Landlord did not provide photographs of the interior of the rental unit at the end and did not provide a condition inspection report showing the condition and state of repair of the unit at the end of the tenancy. There is insufficient evidence from the Landlord to prove that the interior of the rental unit was left unclean and required cleaning. The Landlord's claim for cleaning supplies is dismissed.

Disposal of Garbage \$214.00

I find that the Tenant left garbage and furniture on the rental property at the end of the tenancy. I accept the Landlord's photographic evidence which shows a substantial

amount of garbage and furniture left on the property. I find that the Tenant is responsible to compensate the Landlord for the cost of disposing the garbage.

While I acknowledge the Tenant's submission that other occupants left garbage on the property, I find that the amount of garbage left behind by the Tenant was substantial and the Landlords claim for \$214.00 to remove and dispose of the garbage is reasonable.

I award the Landlord the amount of \$214.00 for the cost of garbage removal.

New Stove \$392.00

The Landlord is seeking to recover the cost of purchasing a new stove.

Residential Tenancy Branch Policy Guideline #1 Responsibility for Residential premises provides the following information:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

Both parties testified that the stove was at least ten years old. There is insufficient evidence from the Landlord that the stove needed to be replaced due to deliberate actions or neglect by the Tenant. The Landlord's claim for the replacement cost of the stove is dismissed.

With respect to the Landlords submission that the Tenant owes him \$350.00 towards a stove, the Landlords application and monetary order worksheet did not include this specific claim. The claim for \$350.00 is dismissed with leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$314.00 comprised of \$214.00 for disposal costs and the \$100.00 filing fee. I grant the Landlord a monetary order in the amount of \$314.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Landlord has established a monetary claim against the Tenant in the amount of \$314.00.

I grant the Landlord a monetary order in the amount of \$314.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

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: May 30, 2019

Residential Tenancy Branch