



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

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 unpaid rent (overholding), for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2013. Current rent in the amount of \$1,350.00 was payable on the first of each month. The tenant paid a security deposit of \$625.00 and a pet damage deposit of \$50.00. The tenancy ended on February 1, 2019.

The landlord claims as follows:

| | | |
|----|--------------------------|-------------------|
| a. | Loss of rent for one day | \$ 45.00 |
| b. | Damage to grass | \$ 892.50 |
| c. | Cleaning | \$ 180.00 |
| d. | Filing fee | \$ 100.00 |
| | Total claimed | \$1,217.50 |

Loss of rent for one day

The landlord testified that the tenant was required to vacate the premises by 1:00pm on January 31, 2019, by way of an order of possession. The landlord stated that the tenant needed more time to vacate and the tenant vacated on February 1, 2019.

The tenant testified that needed more time to vacate the property. The tenant stated they asked the landlord to stay one more day, which was consented too. The tenant stated the landlord did not tell them that they would be seeking one day of rent at the time.

Damage to grass

The landlord testified that the tenant had installed a pool, and sand and concrete pavers were used, killing the grass. The landlord stated the tenant also installed a sitting area also using sand and concrete pavers, killing the grass. The landlord stated that they had to remove the sand; however, the cost to repair the grass was estimated at the amount of \$892.50. Filed in evidence are photographs and an estimate for repair.

The landlord testified that the work has not been completed as the grass unit the weather is warmer.

The tenant testified that they did install a pooling, using sand and concrete pavers. The tenant stated that they had the pavers removed; however, they did not have enough time to remove the sand in the sitting area.

The tenant testified that the raked the pool area out and added soil. The tenant stated that they planted grass seed; however, that the grass likely died due the time of the

year. The tenant stated that the lawn was not in good condition as it was mostly weeds. Filed in evidence are photographs, they do not support that soil was added to the sand.

Cleaning

The landlord testified that the tenant did not clean the rental unit properly. The landlord stated that the oven was dirty, the window tracks were not cleaned and the kitchen and a bathroom were left dirty. The landlord stated that they hired a cleaning person and they did four hours of work. The landlord seeks to recover the cost of cleaning for the amount of \$120.00. Filed in evidence is a receipt. Filed in evidence are photographs.

The landlord testified that the cleaner was unable to complete all the required cleaning. The landlord stated that they and their spouse cleaned for an addition eight hours; however, they seek to recover for cleaning \$60.00.

The tenant testified that they cleaned most of the rental unit. The tenant stated that they did not have enough time and they hired a cleaner to attend the unit to clean the window tracks, re-clean the stove and any other cleaning they though were necessary. The tenant stated that they believe it would have taken their cleaner about 1/12 hours.

The tenant testified that when their cleaner attended they were refused access by the landlord's spouse.

The landlord argued that the tenant never informed them that a cleaner was coming. The landlord stated that the person who attended was rude to their spouse and was not allowed access to the premises.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Loss of rent for one day

In this case, the tenant was required to vacate the rental unit by 1:00pm on January 31, 2019, by an Order of the Director. The tenant did not vacate until February 1, 2019. I find the tenant breached the Order of the Director. I find the landlord is entitled to recover loss of rent for one day in the amount of **\$45.00**.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damage to grass

In this case, the tenant installed a pool, and used sand and cement pavers under the structure. The tenant removed the pool, and the concrete pavers.

I am satisfied that this use of sand and pavers caused damage to the property by killing the grass. Further, even if the grass was primarily weeds, which I do not accept, it was the tenant's responsibility to make the repair.

I am not satisfied that the tenant made the necessary repairs as the tenant's photographs do not support that there was soil added to the sand and it would be

impossible for grass to grow in the winter month. I find the tenant breached the Act and the landlord suffered a loss. I am satisfied based on the estimate provided as evidence by the landlord that the cost for the repair is not unreasonable. Therefore, I find the landlord is entitled to recover the cost to repair the lawn in the amount of **\$829.50**.

Cleaning

I accept the evidence of the tenant that they had hired a person to attend the premises to clean the window tracks, oven and to ensure the premises fully cleaned. The landlord did not allow the cleaner to attend as they were not notified that the cleaner was coming. Further, there were issues with the behavior of the person attending. I find the landlord had the right to turn away the tenant's cleaner, as the tenancy had already legally ended.

In this case, the landlord hired a cleaner that cleaned the window tracks, oven, kitchen and bathroom. As the tenant admitted that they had left some deficiencies in the rental unit and hired a person to clean and believe it would have taken approximately 1 1/2 hours, I find the difference of time is not significant as often cleaning takes longer than expected. I find the amount claimed by the landlord is not unreasonable. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount of **\$120.00**.

However, the landlord is claiming an additional \$60.00 for their time cleaning. While I accept this is not an unreasonable amount; however, based on the photographs, I cannot determine if this was to bring the rental unit to a higher standard than the Act requires. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,094.50** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$625.00** and pet damage deposit of **\$50.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$419.50**.

This 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 is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 31, 2019

Residential Tenancy Branch