



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On March 5, 2019, the Landlord applied seeking a monetary order for unpaid rent; damage to the rental unit; for money owed or compensation for damage or loss; and to keep all or part of the security deposit.

On March 8, 2019, the Tenants applied for a monetary order for the return of a security deposit.

The matter was set for a conference call hearing. The Landlord and Tenant, Ms. T.B. attended the hearing. The Tenant was assisted by an advocate. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties confirmed that they had 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order due to damage to the rental unit?
- Is the Landlord entitled to a monetary order due to unpaid rent?
- Is the Landlord entitled to a monetary order due to money owed or compensation for damage or loss?

- Are the Tenants entitled to the return of the security deposit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 14, 2019, on a month to month basis. Rent in the amount of \$800.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$400.00 to the Landlord. The Tenant is also required to pay the amount of \$120.00 each month for gas and water. Electricity costs are not included in the rent. The parties testified that the tenancy ended on February 12, 2019.

Landlord's Application

The Landlord is seeking compensation for the following items:

Hydro	\$37.24
Door Knob	\$55.99
Shower Curtain	\$21.26
Unpaid Rent	\$570.00
Cleaning	\$120.00
Cleaning Supplies	\$20.00
Dump Costs	\$30.00
Shower Rod	\$20.00
Photo Development	\$43.40
total	\$927.89

Hydro

The Landlord is seeking \$37.24 for unpaid hydro costs. The Landlord testified that the Tenants failed to pay the hydro bill. The Landlord is claiming \$1.33 per day for 28 days of use. The Landlord provided a copy of a hydro bill in the Landlord's name for a billing period of December 8, 2018, to February 6, 2019. The hydro bill indicates that the average daily cost of electricity for the billing period is \$1.33.

The Tenant testified that she paid the hydro bill for the time she lived in the unit, but not for the entire 28 days.

Door Knob Replacement

The Landlord is seeking the replacement cost of a doorknob. The Landlord testified that she discovered the door knob on the furnace room door was broken. She testified that

tried to fix the doorknob. She testified that the doorknob was new at the start of the tenancy. The Landlord provided a photograph of the doorknob.

In reply, the Tenant's advocate submitted that the Landlord failed to perform a move in inspection at the start of the tenancy. She submitted that there is no proof of the condition of the doorknob at the start of the tenancy. She submitted that the Landlord has extinguished the right to make a claim against the security deposit.

In reply, the Landlord provided testimony confirming that she did not perform a move in inspection at the start of the tenancy.

Photograph Costs

The Landlord is seeking \$43.40 for the cost of developing duplicate photographs taken of the rental unit. The Landlord provided a receipt.

In reply, the Tenant's advocate submitted that the Landlord could have provided prints or could have reduced her costs by providing digital copies on a thumb drive.

Shower Curtain

The Landlord is seeking \$21.26 for the replacement cost of a shower curtain. The Landlord testified that the shower curtain was left damaged and dirty. The Landlord testified that threads were pulled. The Landlord testified that the shower curtain was new and that she always replaces the shower curtain at the start of each tenancy. The Landlord provided a photograph of the shower curtain.

In reply, the Tenant's advocate submitted that if the Landlord replaces the curtain for each tenancy, then the Landlord has not suffered a loss.

The Landlord responded that she only would have replaced the curtain liner.

Door Mat

The Landlord is seeking \$10.00 for the cost to replace a missing door mat.

In reply, the Tenant agreed to pay the \$10.00 replacement cost of the door mat.

Rent

The Landlord is seeking to recover unpaid rent. The Landlord testified that the Tenant did not pay any rent for January or February. The Landlord is requesting compensation for unpaid rent for February 2019, and four days of March 2019, based on the effective date of a One Month Notice to End Tenancy for Cause that was issued to the Tenant. The Landlord is seeking the amount of \$26.66 per day.

The Landlord testified that she received \$350.00 for February 2019, rent and no further amount for rent was received. The Landlord is seeking \$450.00 for the balance of rent owing for February 2019. The Landlord testified that the notice to end tenancy she issued has an effective date of March 4, 2019, so she is seeking compensation for four days of March 2019, rent at \$26.66 per day.

The Landlord testified that the rental unit was not re-rented for the months of February and March 2019, and she received no additional rent for these months.

The Tenant provided testimony that the Landlord let her move into the unit on January 24 and at that time the Tenant paid the Landlord \$425.00 by cheque and cash. She testified that the Landlord did not require her to pay rent for the month of January. The Tenant testified that she did not pay all the rent owing for February 2019.

The Tenant testified that she received a One Month Notice to End Tenancy for Cause from the Landlord and disputed the Notice. She testified that she decided to move out of the rental unit prior to the dispute hearing.

The Landlord testified that the payment he received from the Tenant in late January was for the amount owing for the security deposit. The Landlord testified that she was never served with any notification that the Tenant disputed the One Month Notice.

Gas and Water

The Landlord is seeking the amount of \$120.00 for gas and water for the month of February 2019. The Landlord is also seeking compensation for four days of March 2019, at \$4.00 per day.

Cleaning Costs

The Landlord testified that when the Tenant moved out she left the rental unit unclean. The Landlord provided photographs showing the condition of the rental unit. The

Landlord is seeking compensation of \$120.00 for the four hours it took for her to clean the rental unit

The Tenant testified that she did not clean the rental unit at the end of the tenancy.

Cleaning Supplies

The Landlord is seeking to recover the amount of \$20.00 for the purchase of cleaning products. The Landlord did not provide a receipt.

The Tenant did not provide a response to the claim. The Tenant's advocate submitted that the Landlord could have hired a cleaning company at \$30.00 per hour which would have included cleaning products.

Dump Costs

The Landlord is seeking to recover the cost of disposing furniture and junk left behind by the Tenant. The Landlord did not provide a receipt but is claiming \$3.50 for dump fees and \$26.50 for her time and gas costs.

In reply, the Tenant's advocate submitted that the Landlord's evidence only shows one garbage bin.

Shower Rod

The Landlord is seeking \$20.00 for the replacement cost of a damaged shower rod. The Landlord provided a photograph of the rod. The Landor testified that she had a spare one but is seeking to recover what it would cost to purchase one.

In reply, the Tenant accepted responsibility to pay the \$20.00 cost of the shower rod.

Security Deposit

An application for dispute resolution is considered received on the date filing fee is paid. The Landlord applied and paid the filing fee on February 26, 2019.

The parties testified that the tenancy ended when the Tenant moved out on February 12, 2019.

Tenant's Application

Security Deposit

The Tenants are seeking the return of the \$400.00 security deposit.

The Tenant, Ms. T.B. testified that she cannot recall when she provided her full forwarding address to the Landlord. She testified that there was no agreement reached that the Landlord could keep any amount of the security deposit.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

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. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

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.

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Sections 23 and 35 of the Act provides 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. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

Section 44 of the Act provides that the tenancy ends if the Tenant vacates or abandons the rental unit.

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

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

Rent

I find that the tenancy ended when the Tenant vacated the rental unit on February 12, 2019. I find that the Tenant is obligated to compensate the Landlord for any loss of rent up to the earliest time that the Tenant could legally have ended the tenancy.

With regard to the earliest date the Tenant could legally end the tenancy, I find that the Tenant did not provide the Landlord with proper written notice to end the tenancy. The One Month Notice to End Tenancy for Cause dated February 2, 2019, issued by the Landlord provides an effective date of March 4, 2019. The effective date of the Notice is earlier than the earliest date permitted under section 47(2) of the Act and is deemed to be the earliest date that complies with section 47(2). I find that the effective date of the One Month Notice is March 31, 2019. I find that March 31, 2019, is the earliest date that the Tenants could legally have ended the tenancy.

I find that the Tenants paid the Landlord \$350.00 for February 2019, rent and owe the Landlord the balance of \$450.00 for February 2019, rent. I find that the Tenants also owe the Landlord for a loss of March 2019, rent. The Landlord claimed compensation for four days of rent and is awarded compensation for four days rent in the amount of \$25.80 per day ($\$800 / 31 = \25.80). The Landlord is awarded \$103.20 for a loss of March 2019, rent.

Gas and Water

I find that the tenancy agreement requires the Tenants to pay the Landlord the amount of \$120.00 each month for gas and water.

I find that the Landlord is entitled to the amount of \$120.00 for the month of February 2019. I find that the Tenants moved out of the rental unit on February 12, 2019, and therefore they were not living in the rental unit using gas or water for any part of March 2019. The Landlord's claim for gas and water costs for March 2019, is dismissed.

I award the Landlord \$120.00 for February 2019, gas and water.

Hydro

I accept the Landlord's evidence that the average daily cost of electricity for the billing period of December 8, 2018, to February 6, 2019, is \$1.33.

I find that the Tenant is obligated under the tenancy agreement to pay for hydro costs for the time period she was living in the rental unit. I find that the Tenant lived in the rental unit for 20 days, from January 24, 2019, until February 12, 2019.

I find that it is reasonable to accept that the daily cost of electricity for the 20 day period is \$1.33. I award the Landlord the amount of \$26.60 for hydro costs.

Door Knob

The Landlord failed to conduct a move in inspection and complete an inspection report which would prove the condition and state of repair of the rental unit at the start of the tenancy. I find that there is no proof of the condition of the doorknob at the start of the tenancy.

In addition the Landlord testified that the doorknob was noticed to be missing on the furnace room door, but later she testified that it was found to be broken and provided a photograph of the doorknob attached to a door. The Landlord's evidence was internally inconsistent on this claim.

I find that there is insufficient evidence from the Landlord that the Tenant is responsible for damage to the doorknob. The Landlord's claim is dismissed.

Photograph Costs

The Landlords claim to recover the costs of photograph developing is dismissed. I find that it was the Landlord's choice to develop the photographs. I find that the Landlords costs for preparing for the hearing is a cost of doing business as a Landlord and is not recoverable against the Tenant.

Shower Curtain

The Landlord failed to conduct a move in inspection and complete an inspection report which would prove the condition and state of repair of the rental unit at the start of the tenancy. I find that there is no proof of the condition of the shower curtain at the start of the tenancy.

The Landlord's evidence of a photograph of the shower curtain at the end of the tenancy does not prove its condition at the start of the tenancy.

The Landlord's claim for the replacement cost of a shower curtain is dismissed.

Door Mat

The Tenant agreed to pay the amount claimed by the Landlord for the replacement cost of a door mat. I award the Landlord the amount of \$10.00.

Shower Rod

The Tenant agreed to pay the amount claimed by the Landlord for the replacement cost of a shower rod. I award the Landlord the amount of \$20.00.

Cleaning Costs

The Tenant testified that she did not clean the rental unit at the end of the tenancy. I find that the Tenant is responsible to leave the rental unit clean at the end of the tenancy, therefore the Tenant is responsible for the Landlord's costs to clean the rental unit at the end of the tenancy.

I accept the Landlord's evidence that the rental unit was left unclean and I find that the Landlord's claim for four hours of cleaning is reasonable. I award the Landlord the amount of \$120.00 for cleaning costs.

Cleaning Supplies

The Landlord did not provide a receipt for the cost of purchasing cleaning supplies. While I have accepted that the rental unit was left unclean, there is no proof that the Landlord purchased cleaning supplies and there is no evidence to prove the value of loss.

The Landlord's claim is dismissed.

Dump Costs

The Landlord provided insufficient evidence that the Tenant is responsible for the disposal cost of items left behind in the unit by the Tenant. The Tenant's advocate pointed out that the Landlord's evidence only shows one garbage bin.

In addition, the Landlord did not provide a receipt for the cost of disposing items at the dump.

The Landlord's claim for \$20.00 is dismissed.

Security Deposit

The Landlord applied for dispute resolution and claimed against the security deposit on February 26, 2019. I find that the Landlord applied to keep the deposit within 15 days from the end of the tenancy.

I find that the Landlord failed to perform a move in condition inspection with the Tenant as required by the Act. The Landlord's right to claim against the security deposit is therefore extinguished.

The Tenant is awarded the return of the security deposit of \$400.00; however, pursuant to section 72 (2) of the Act, any amounts awarded to the Landlord may be deducted from the deposit due to the Tenant.

The Landlord was successful on a number of claims and is awarded the amount of \$849.80 for unpaid rent and utilities, and cleaning and repair costs to the rental unit.

After setting off the security deposit of \$400.00 from the award of \$849.80, I find that the Tenant owes the Landlord the balance of \$449.80.

I grant the Landlord a monetary order in the amount of \$449.80. 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.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties were successful with their applications, I do not grant recovery of the filing fees.

Conclusion

The Tenants were successful with their claim for the return of a security deposit of \$400.00.

The Landlord was partially successful with her claims and is awarded \$849.80 for unpaid rent and utilities, and cleaning and repair costs to the rental unit.

After setting off the security deposit of \$400.00 from the award of \$849.80, I find that the Tenant owes the Landlord the balance of \$449.80.

I grant the Landlord a monetary order in the amount of \$449.80.

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: July 17, 2019

Residential Tenancy Branch