



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FFL

Introduction

On April 22, 2019, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit. On May 24, 2019, the Landlords amended their application to increase the amount of their monetary claim.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not.

The Landlord testified that she served the Notice of Dispute Resolution Proceeding to the Tenant using registered mail sent on April 30, 2019, to the Tenant at her new address. The Landlord testified that she confirmed that the Tenant was still living in her new rental unit by calling the Tenant's new Landlord.

The Landlord testified that the Tenant refused to accept the registered mail and it was returned to the Landlord as unclaimed. The Landlord testified that the Tenant sent her a text message and informed her that the Tenant will not accept the registered mail.

Pursuant to sections 89 and 90 of the Act, I find that the Notice of Dispute Resolution Proceeding is deemed to have been received by the Tenant on May 5, 2019, the fifth day after it was mailed. The Tenant cannot avoid service of a Notice of Dispute Resolution Proceeding by refusing to accept registered mail.

The Landlord was provided with an opportunity to ask questions about the hearing process. She was 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 a monetary order for damage or repair costs?
- Can the Landlords keep the security deposit towards their claims?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2018, on a month to month basis. Rent in the amount of \$1,000.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$100.00.

The Landlord testified that the Tenant moved out of the rental unit on March 22, 2019 and did not pay the rent owing for March 2019.

The Landlord is seeking compensation as follows:

| | |
|--|------------|
| Loss of Rent for September 2018 and March 2019 | \$1,500.00 |
| Damage and Repair Costs | \$5,911.43 |

Loss of Rent

The Landlord testified that the Tenant only paid \$500.00 towards September 2018, rent. The Landlord testified that the Tenant still owes \$500.00 for September 2018, rent.

The Landlord testified that the Tenant failed to pay the rent of \$1,000.00 owing under the tenancy agreement for the month of March 2019.

The Landlord is seeking a monetary order in the amount of \$1,500.00 for unpaid rent.

Damage

The Landlord testified that the Tenant is responsible for extensively damaging the rental unit. The Landlord testified that there was damage to every room. The Landlord

testified that there were holes in the walls and ceiling. The Landlord testified that the Tenant did extensive damage to the flooring.

The Landlord testified that the flooring was installed new just prior to the start of the tenancy. The Landlord testified that the flooring in the hallway, kitchen and living room were not able to be repaired and need to be replaced.

The Landlord provided a quote she received from a local company for the cost to repair the damage to the rental unit.

The Landlord provided numerous photographs of the condition of the rental unit at the start of the tenancy and photographs taken at the end of the tenancy showing the damage done by the Tenant, showing the damage.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

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.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a Tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

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

I have reviewed the Landlord's photographic evidence. I accept the Landlord's evidence showing the condition and state of repair of the rental unit at the start of the tenancy. I note that at the start of the tenancy the walls and flooring looks to be new and in good condition. The Landlord's photographic evidence shows that there is extensive damage and scratching on the flooring at the end of the tenancy.

I also find that there are small and large holes and marks on the walls throughout the rental unit. I find that there are an excessive number of holes and many are larger than small nail holes.

I find that the Tenant is responsible for paying for the repair of walls where there are an excessive number of nail holes, or large nails, or screws.

I find that the Landlord has established that the Landlord has suffered a loss of value in her home due to damage done to the rental unit by the Tenant. I find that the damage done by the Tenant is extensive. I accept the quote provided by the Landlords for the cost to repair the rental unit.

I award the Landlord the amount of \$5,911.43 for the cost to repair the rental unit.

I also find that the Tenant failed to pay the rent owing under the tenancy agreement for the month of September 2018, and March 2019. I award the Landlord \$1,500.00 for unpaid rent.

I authorize the Landlords to keep the security deposit of \$100.00 towards the Landlord's claims.

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 Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$7,511.43 comprised of \$5,911.43 for repair costs; \$1,500.00 in unpaid rent, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$100.00 towards the

award of \$7,511.43, I find that the Landlord is entitled to a monetary order in the amount of \$7,411.43. 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 Tenant failed to pay rent owing under the tenancy agreement and left the rental unit damaged and is responsible to pay the costs of repair.

I order that the Landlord can keep the security deposit in the amount of \$.00 in partial satisfaction of the Landlord's claim.

The Landlord has established a total monetary claim of \$7,511.43 comprised of \$5,911.43 for repair costs; \$1,500.00 in unpaid rent, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$100.00 towards the award of \$7,511.43, I find that the Landlord is entitled to a monetary order in the amount of \$7,411.43.

I grant the Landlord a monetary order in the amount of \$7,411.43.

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 31, 2019

Residential Tenancy Branch