



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for return of rent, for other money owed, for the return of the security deposit and pet damage deposit and to recover the filing fee from the landlord.

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.

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 tenant entitled to a monetary order for return of rent?

Is the tenant entitled to monetary compensation for damages?

Is the tenant entitled to the return of the security deposit and pet damage deposit?

Background and Evidence

The parties agreed that the tenancy began on May 15, 2019. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 (the “Deposits”). The tenancy ended on June 14, 2019.

The tenant claims as follows:

a.	Return of rent	\$1,200.00
b.	Return of power utility	\$ 158.36
c.	Cost of clean and yard word	\$ 800.00
d.	Vet bill spear grass and ear infection	\$ 545.01
e.	Return of double the Deposits (\$1,200.00)	\$2,400.00
f.	Filing fee	\$ 100.00
	Total claimed	

The tenant testified that they seek to have the rent returned for May 2019, as they did not sleep in the rental unit. The tenant stated that they only brought a few items to the premises at the start. The tenant stated that they had to clean the rental unit and clean the yard.

The tenant testified that one of the carpets smelled like pet urine and they told the landlord that they would clean them. The tenant stated that they cleaned the carpets several times; however, the smell was still bad. The tenant stated that they talked to the landlord and the landlord stated that they would replace the carpet and they obtained several quotes from the landlord. However, it appeared the relationship was breaking down, so they ended the tenancy based on a breach of material term.

The tenant testified that they had to pay to have the utilities in their name when the tenancy started, and they should be entitled to recover those costs.

The tenant testified that they spent time cleaning the premise and yard. The tenant stated they did not keep track of their hours; however, they believe the amount of \$400.00 for the rental unit and \$400.00 for the yard to be reasonable.

The tenant testified that they normally did not have their dog in the backyard; however, they did on one occasion and their dog got spear grass in its ear and had to see a veterinarian. The tenant stated that the spear grass caused a later ear infection. The tenant stated the landlord should be responsible for the cost of the veterinarian services.

The tenant testified that they gave the landlord notice on June 10, 2019, to end the tenancy on June 14, 2019 for breach of contract and that letter contained their forwarding address. The tenant stated that the landlord did not return their security deposit.

The landlord testified that the tenant is not entitled to the return of the rent. The landlord stated the tenant had possession of the rental unit for the entire month. The landlord stated the rental unit was in good condition when the tenancy started. The landlord stated the rental unit was freshly painted.

The landlord testified that the tenant told them that the bedroom carpet had a smell and that they would like the carpet replaced. The landlord stated they were looking into the issue of maybe getting a new carpet. However, the tenant removed the carpet without their consent. The landlord stated that the tenant also started to repaint the rental unit white and green and was left unfinished. The landlord stated that the tenant did not have their consent to paint the unit.

The landlord testified that they did receive the tenant's forwarding address and did not make an application claiming against the security or return the deposit.

The tenant testified that they admit they removed the carpet and was repainting the unit and did not have the landlord's consent.

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 tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a **reasonable period after** the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, the tenant seeks the return of May 2019 rent. However, I find that unreasonable as the tenant had legal possession of the rental unit and the tenant was painting parts of the unit and removing carpet. The tenant had no authority to do so and they admitted at the hearing they did not have the landlord's consent.

Further, although the tenant gave notice to end the tenancy for breach of a material term. The tenant did not indicate what the specific issue was, or give the landlord a reasonable time to rectify the problem after the notice to end tenancy was given.

The tenant gave notice on June 10, 2019 to end the tenancy on June 14, 2019. I find the tenant has presented no supporting evidence to prove a breach of a material term or that they complied with the requirements of section 45(3) of the Act. Therefore, I dismiss the tenant's application for return of rent for May 2019.

As I have found the tenant has failed to prove a violation of the Act by the landlord. I find the tenant is not entitled to recover the amount they paid to have the utilities transfer in their name for the premise, and the use of utilities they used during their tenancy. Therefore, I dismiss this portion of the tenant's claim.

In this case, the tenant seeks to recover the cost of cleaning the rental unit and yard. However, the tenant has presented no evidence that the unit was not provided in good condition.

The tenant provided no photographs, no text messages between the tenant and landlord about the cleanliness of the rental unit, one text message only indicates that they found a piece of wood with a nail, in the backyard.

Furthermore, it is just as likely that the tenant is claiming for the cost of painting and removing the carpet which they had no authority to do and is a violation of the Act. I find the tenant has not met the burden of proof. Therefore, I dismiss this portion of the tenant's claim.

I also find the tenant's claim to recover veterinarian bills from the landlord for their dog getting a piece of spear grass in its ear unreasonable. Whether there was spear grass in the backyard, the tenant's pet was in their own care. I find the tenant cannot blame the landlord on their lack of attention to watching their own pet. Spear grass is a grass and can be reasonable expected in yards. I find the tenant has failed to prove a violation of the Act. Therefore, I dismiss this portion of the tenant's claim.

In this case, the landlord acknowledged that they had received the tenant's forwarding address and did not make a claim against the security deposit, within 15 days of the end of the tenancy or receipt of the forwarding address.

I find the landlord has breached section 38(1) of the Act.

While I accept the landlord may be entitled to loss of rent, and damages to the unit, they cannot simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlord was not entitled to retain any portion of the Deposits.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), of the Act the landlord must pay the tenant double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$2,400.00**, comprised of double the pet damage deposit (\$600.00) and security deposit (\$600.00) on the original amounts held.

I find the tenant has established a total monetary claim of **\$2,500.00**, comprised of the above amount and to recover the \$100.00 fee for filing this Application.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenant's application for a monetary order for return of rent, and damages is dismissed. The tenant's application for return of double the Deposits is granted.

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: October 31, 2019

Residential Tenancy Branch