



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MND, FFL

Introduction

On July 30, 2019, the Landlord 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 damage or repairs.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) attended the teleconference hearing; however, the Tenant did not. The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceedings documents using registered mail sent to the Tenant’s forwarding address on August 8, 2019. The Landlord provided a copy of the registered mail receipt. I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act.

The Landlord was provided with an opportunity to ask questions about the hearing process. The Landlord 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

- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to money owed or compensation for damage or loss?

Background and Evidence

The Landlord testified that the tenancy began in April 2013. Rent in the amount of \$930.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00. The Landlord provided a copy of the tenancy agreement. The Landlord testified that the Tenant smoked in the rental unit. The Landlord testified that at the end of the tenancy, the Tenant agreed that the Landlord could retain the security deposit of \$400.00 for the cost of repainting the rental unit. The Landlord testified that the Tenant also paid an additional amount of \$30.00 to the Landlord for the painting costs.

The Landlord testified that the rental unit was painted on July 4, 2019. The Landlord testified that she entered into a tenancy agreement with a new tenant to move into the unit on July 14, 2019 at a monthly rent of \$1,320.00. The Landlord testified that the new Tenant refused to move in on July 14, 2019 because of a strong smell that remained in the unit.

The Landlord testified that the new Tenant backed out of the tenancy agreement. The Landlord repainted the rental unit on July 16, 2019. The Landlord re-rented the unit to a new tenant on July 25, 2019.

The Landlord is seeking compensation of \$367.40 for the cost to repaint the unit on July 16, 2019, and is seeking compensation of \$425.80 for a loss of 10 days rent when the new Tenant backed out of a tenancy agreement.

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.

Residential Tenancy Branch Policy Guideline # 16 states 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 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 before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I find that the Tenant compensated the Landlord in the amount of \$430.00 for the cost to repaint the rental unit on July 4, 2019. I find that the Tenant is not liable for painting costs if the Landlord did not prepare the unit by washing, priming and painting the unit properly to cover any odors on July 4, 2019. I find that the Tenant is not responsible to compensate the Landlord for the effort to repaint the unit on July 16, 2019 after the new tenant backed out of the contract. The Landlord's claim for additional painting costs of \$367.50 is dismissed.

With respect to the loss of rent, the Landlord repainted the unit and was responsible on July 14, 2019 to provide the new Tenant with a rental unit that is suitable for occupation and complies with health, safety and building standards. If the Landlord suffered a loss of rent due to the new Tenant backing out of the tenancy agreement, the Landlord should pursue those costs against the Tenant that backed out. It appears that the Landlord permitted the new Tenant to back out of the tenancy agreement and is attempting to recover a loss of rent from the previous Tenant. I find that the Tenant is not responsible for the loss of rent suffered by the Landlord. The Landlord's claim for \$425.80 is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was not successful with the claims, I decline an order for the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Conclusion

The Landlord's claims for compensation for damage and a loss of rent are not successful and are dismissed without leave to reapply.

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: November 21, 2019

Residential Tenancy Branch