



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FFL

Introduction

On October 10, 2019, the Landlord 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.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenant attended the teleconference hearing. The Tenant was assisted by a translator. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were 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 to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage or repair costs?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on May 1, 2018 as a one-year fixed term tenancy. Rent in the amount of \$4,800.00 was to be paid to the

Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$2,400.00. The Tenant moved out of the rental unit at the end of April 2019.

The Landlord is seeking compensation for a loss or rent and for damage to the rental unit as follows:

Loss of April 2019 Rent \$2,400.00

The Landlord testified that that Tenant only paid \$2,400.00 towards April 2019 rent. The Landlord testified that the Tenant told the Landlord to keep the security deposit of \$2,400.00 towards the remaining amount owing for April rent.

The Landlord is seeking compensation of \$2,400.00 for unpaid April 2019 rent.

In reply, the Tenant confirmed that he only paid \$2,400.00 for April 2019 rent and that he told the Landlord to keep the security deposit for the amount owing.

Cleaning Costs \$472.50

The Landlord testified that the rental unit was left unclean at the end of the tenancy. The Landlord testified that a cleaning company was hired to clean the rental unit. The Landlord testified that the cleaning service was paid \$472.50 for the cleaning the unit. The Landlord did not provide any photographs showing the condition of the rental unit at the end of the tenancy. The Landlord testified that he did not perform a move out inspection with the Tenant at the end of the tenancy. The Landlord provided a copy of an invoice dated May 10, 2019 from a cleaning company in the amount of \$472.50.

In reply, the Tenant testified that the rental unit was left cleaner than when they got it.

Damages

The Landlord testified that the kitchen cabinet doors were damaged and required repainting. The Landlord provided photographs showing worn paint/ stain on the kitchen cabinets. The Landlord provided an invoice for the cost to have the cabinets repainted. The invoice dated June 14, 2019 indicates the materials and labor to repaint the cabinets cost \$1,700.00.

The invoice provided by the Landlord indicates that the side panels of a kitchen table were repainted at a cost of \$300.00. The Landlord did not provide any photographs of a damaged table.

The Landlord testified that the towel rack and toilet paper holder were found to be loose at the end of the tenancy. The Landlord did not provide any photographs of the rack or holder. The Landlord testified that the rack and holder had to be re-secured to the walls. The Landlord is seeking \$150.00 for the cost to re-secure the rack and \$150.00 to re-secure the holder.

In response to the Landlords claims, the Tenant testified that there was no move in inspection completed by the Landlord at the start of the tenancy. The Tenant testified that the cabinets were left in the same condition that they were found at the start of the tenancy.

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.

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 does not perform an inspection and complete an inspection report in accordance with the regulations.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Security Deposit

I find that the Landlord failed to perform a move in inspection and a move out inspection and complete a report as required by sections 23 and 35 of the Act. I find that the Landlord has extinguished his right to claim against the security deposit for damage.

The Landlord retains the right to make claims for damage; but has extinguished his right to claim against the security deposit

Accordingly, I grant the return of the security deposit in the amount of \$2,400.00 to the Tenant.

Unpaid April 2019 Rent

Section 21 of the Act provides that unless the Landlord gives written consent, a Tenant must not apply a security deposit or a pet damage deposit as rent. I find that the Tenant failed to pay the entire rent owing under the tenancy agreement for the month of April 2019.

I grant the Landlord compensation in the amount of \$2,400.00 for unpaid April 2019 rent.

Cleaning Costs

The Landlords claim for cleaning costs is dismissed without leave to reapply. The Landlord failed to complete a move in inspection report and a move out inspection report which could provide evidence of the condition and state of repair of the rental unit at the start and end of the tenancy. The Tenant refuted that the rental unit was left unclean, and the Landlord did not provide sufficient evidence to show that the rental unit was left unclean.

Kitchen Cabinet and Table Repairs

The Landlords claim to recover costs for cabinet door repairs and a table repair is dismissed without leave to reapply. The Landlord failed to complete a move in inspection report and a move out inspection report which could provide evidence of the condition and state of repair of the cabinets and table at the start and end of the tenancy. While the Landlord provided photographs of the cabinets showing worn/ damaged paint, at the end of the tenancy, the Tenant testified that the cabinets were in that condition at the start of the tenancy. The Landlord did not have any documentary evidence to show the condition of the cabinets or table at the start of the tenancy.

Towel Rack and Toilet Paper Holder Repairs

I have considered the evidence and testimony from the parties. I find that the towel rack and toilet paper holder had become loose. There was no evidence to suggest that the tenant used the rack and holder in a negligent manner. I find that they came loose from the wall due to normal use. I find that the cost to re-secure these items is a property maintenance issue/ cost that is the responsibility of the Landlord.

The Landlords claim for compensation to re-secure the rack and holder is dismissed without leave to reapply.

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 partially successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Tenant is granted the return of the security deposit of \$2,400.00.

The Landlord is granted a monetary order for unpaid rent and the filing fee in the amount of \$2500.00.

After setting off the amounts the Landlord and Tenant owe each other, I find that the Landlord is entitled to a monetary order in the amount of \$100.00. I grant the Landlord a monetary order in the amount of \$100.00. 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 Landlord breached sections 23 and 35 of the Act and extinguished the right to claim against the security deposit.

The Tenant is awarded the return of \$2,400.00 for the security deposit.

The Landlord has established a monetary claim in the amount of \$2,500.00 for unpaid April 2019 rent and the recovery of the filing fee.

After setting off the awards, I grant the Landlord a monetary order in the amount of \$100.00.

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: March 23, 2020

Residential Tenancy Branch