



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FFL

Introduction

On June 5, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; 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 and Tenants attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. 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

- 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?
- Are the Landlords entitled to other compensation for damage or loss?
- 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 and Tenants testified that the tenancy began on May 1, 2019 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in

the amount of \$2,400.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,200.00.

The parties testified that the Tenants moved out of the rental unit on May 30, 2020.

Loss of Rent \$2,400.00

The Landlord testified that the Tenants did not provide proper notice to end the tenancy. The Landlord testified that they received notice on May 29, 2020 indicating the Tenants will be moved out of the unit by May 30, 2020. The Landlords provided a copy of the Notice they received from the Tenants.

The Landlord testified that the Tenants did not pay rent owing under the tenancy agreement for June 2020. The Landlords testified that they were not able to rent the unit to a new tenant for June 2020 and suffered a loss of rent.

The Landlord is seeking the amount of \$2,400.00 for June 2020 rent.

In reply, the Tenants testified that they ended their tenancy early because the Landlord breached a material term of the tenancy agreement by failing to provide a proper working dryer. The Tenants submitted that the living conditions are unacceptable due to the Landlords inability to cooperate and adhere to the agreement. The Tenants submitted that the Landlord is required under section 32 of the Act to maintain the unit.

Damage

The Landlord testified that the Tenants are responsible for damage to the rental unit. The Landlord testified that the walls are damaged and will require patching and painting. The Landlord testified that there were marks left on walls that needed to be filled and repainted. The Landlord testified that there was damage due to a baby gate. The Landlord provided four photographs of the interior of the rental unit. The Landlord testified that the Landlord performed the repair work. When asked how much time the Landlord spent on repairs, the Landlord stated 10 hours at \$25.00 per hour. The Landlord did not provide any receipts for the work.

In reply, the Tenants testified that they provided an audio recording of the Landlord saying the house is in good condition. The Tenants testified that they are responsible for a couple of holes in a wall due to a television mount. The Tenants stated that the Landlord declined their offer to fix the holes. The male Tenant testified that they are not responsible for damage to walls from a baby gate; however, the female Tenant later

testified that they are responsible for making holes for the baby gate and they did not patch the holes. The Tenants submitted that any damage to the paint was regular wear and tear.

The Landlord responded by stating that the entire rental unit was painted in 2019 and that he did not decline their offer to make repairs.

Strata Fine

The Landlord testified that the Tenants are responsible for seven strata infractions while living in the unit.

The Landlord testified that the Tenants violated the strata rules by parking in a visitor spot on May 28, 2020 and by spray painting his car in the garage. The Landlord testified that the painting caused hazardous fumes and the fire department and police were called.

The Landlord testified that the strata corporation levied a \$200.00 fine. The Landlord testified that the Landlord paid the \$200.00 fine. The Landlord provided six photographs of a car being painted. The Landlord did not provide a copy of a document showing that a bylaw fine or strata fine was levied, or any proof that the Landlord has paid a fine.

The Landlord is seeking to recover the amount of \$200.00.

In reply the Tenants testified that they never received any notification for a parking violation on May 28, 2020. The Tenants testified that there were only three infractions and they paid the Landlord \$400.00 for parking fines on September 16, 2019.

Security Deposit

The tenancy ended on May 30, 2020, and on June 5, 2020 the Landlord applied for dispute resolution claiming against the security deposit.

The Landlord is seeking to keep the security deposit of \$1,200.00 in partial satisfaction of the Landlords claims.

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 Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

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.

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

June Rent

I find that the Tenants did not give proper written notice to end the tenancy for May 30, 2020. In accordance with section 45 of the Act, the earliest date the Tenants could have legally ended the tenancy is June 30, 2020.

I do not accept the Tenants submission that a failure of the Landlord to provide a working dryer amounts to breach of a material term of the tenancy agreement that would permit the Tenants to end the tenancy early without giving proper notice.

A material term of a tenancy is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. There is insufficient evidence from the Tenants that both parties agreed that the provision of a dryer is a material term of the tenancy agreement.

I find that the Tenants are responsible to pay the rent owing under the tenancy agreement until the earliest date the tenancy could legally end. I find that the Landlord was not able to rent the unit for June 2020 and the Tenants are responsible to pay the June 2020 rent.

I award the Landlord a monetary order in the amount of \$2,400.00.

Damage

The Tenants acknowledged that they are responsible for some damage to the rental unit at the end of the tenancy. I find that the Tenants are responsible to repair any holes left in walls and I find that the damage is more than regular wear and tear. There is insufficient evidence from the Tenants that the Landlord declined the Tenants offer to make the repairs.

The Landlord stated that the Landlord performed the repairs and did not provide any receipts for the cost of the repairs. I find that the Landlords claim for the repairs is reasonable and I award the Landlord \$250.00 for repairs.

Strata Fine

The Landlord provided insufficient evidence to prove that the Tenants are responsible for a parking violation on May 28, 2020. The Landlords claim is dismissed.

Security Deposit

The Landlord claimed against the security deposit within 15 days of the end of the tenancy. I authorize the Landlords to keep the \$1,200.00 security deposit towards the award for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants 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 \$2,750.00 comprised of \$2,400.00 for rent; \$250.00 for damage; and the \$100.00 fee paid by the Landlords

for this hearing. After setting off the security deposit of \$1,200.00 towards the award of \$2,750.00, I find that the Landlord is entitled to a monetary order in the amount of \$1,550.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants ended the tenancy early and are responsible to pay the rent until the earliest date the tenancy could legally end. The Tenants are responsible for damage to the rental unit at the end of the tenancy.

The Landlords have established a monetary claim in the amount of \$2,750.00. I order that the Landlord can keep the security deposit in the amount of \$1,200.00 in partial satisfaction of the Landlord's claim.

I grant the Landlords a monetary order in the amount of \$1,550.00.

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: October 28, 2020

Residential Tenancy Branch