



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FFL

Introduction

On July 7, 2020, 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 and Tenant 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.

Preliminary and Procedural Matters

The Tenant testified that he served his documentary evidence to the Landlord using email. The Landlord testified that he received an email from the Tenant which provided a link; however, when the link was selected the documents did not appear. The Landlord testified that the documents appeared to be image files.

The Tenant testified that his documentary evidence is of text messages sent back and forth from the Landlord.

Since it appears that both parties are aware of the text evidence, the Landlord was asked whether he had any concern with the Tenant's evidence being accepted and considered. The Landlord agreed that the Tenant's evidence may be considered.

The Tenant's 13 pages of evidence was accepted.

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 testified that the tenancy began on February 1, 2019 as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,800.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$900.00. The Landlord provided a copy of the tenancy agreement.

The parties testified that the Tenant finished moving out of the rental unit on June 6, 2020.

Loss of Rent \$3,285.00

The Landlord testified that the Tenant did not pay rent owing under the tenancy agreement for April 2020 and May 2020. The Landlord is seeking the amount of \$3,600.00 for unpaid rent.

In reply, the Tenant testified that he moved out of the rental unit and sublet the unit to somebody else. The Tenant took the position that he is not responsible for the unpaid rent. The Tenant testified that he did not enter into a written sublet agreement for the rental unit, and he did not give the Landlord any written notice that he was ending the tenancy.

The Landlord testified that he did not give permission to the Tenant to sublet or assign the rental unit and that nobody approached him looking to enter into a tenancy agreement or sublet agreement for the rental unit.

Damage

The Landlord testified that the Tenant left the rental unit unclean at the end of the tenancy. The Landlord is seeking to recover the amount of \$409.50 paid for cleaning costs. The Landlord testified that they hired a cleaning crew who cleaned the unit. The

Landlord provided photographs showing the condition and state of repair of the rental unit at the end of the tenancy. The Landlord provided photographs of an unclean kitchen; bathroom; and laundry room. The Landlord did not provide an invoice for the cleaning costs.

The Landlord testified that the Tenant left the carpet unclean at the end of the tenancy. The Landlord had the carpet cleaned and is seeking to recover the \$126.00 cost. The Landlord provided photographs of unclean carpets and an invoice for the cleaning cost.

In reply, the Tenant testified that he was in Mexico and it is the people who sublet the rental unit who are responsible for any damage or cleaning costs. The Tenant stated that he had a lady prepared to clean the unit on June 7, 2020; however, the Landlord was already in the unit having it cleaned. The Tenant testified that the carpet was unclean at the start of the tenancy.

The Landlord testified that he got a call from the building manager that there were undesirable people living in the unit, so he contacted the Tenant and they attempted to have the people leave. The Landlord and Tenant agreed that the tenancy would end and arranged a move out date for June 6, 2020.

The Landlord testified that the Tenant is responsible for the \$50.00 replacement cost of a garage remote control. The Landlord testified that the Tenant failed to return the remote control at the end of the tenancy and another remote was provided to the Landlord by the building manager.

In reply, Tenant provided testimony acknowledging that he failed to return the garage remote.

Security Deposit

The Landlord applied to keep the security deposit of \$900.00 in partial satisfaction of the Landlord's 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 Branch Policy Guideline # 19 Assignment and Sublet provides the following information:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

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:

April and May 2020 Rent

I find that the Tenant did not have permission from the Landlord to sublet the rental unit. Even if the Tenant did have permission, under a sublet agreement, a Tenant remains responsible to pay the rent to the Landlord.

I accept the Landlord's evidence that the Tenant failed to pay the rent owing under the tenancy agreement for the months of April and May 2020.

I award the Landlord the amount of \$3,600.00 for unpaid rent.

Damage

The Tenant did not have the Landlord's permission to sublet the unit. The Tenant allowed other occupants into the rental unit and is therefore responsible for any damage they caused to the rental unit.

I have reviewed the Landlord's documentary evidence and I find that the Tenant is responsible for the unclean condition of the rental unit. I accept the evidence before me that the parties agreed to end the tenancy on June 6, 2020. I find that the tenancy ended on June 6, 2020. I find that it was too late for the Tenant to attempt to clean the unit on June 7, 2020. Based on the evidence before me, I find that the Landlord's claim for cleaning costs is reasonable and I find that the Tenant is responsible to pay the cleaning costs.

Carpet

A tenant is responsible for periodic cleaning of carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

I find that the carpets in the unit were left unclean. I find that the tenancy continued for more than one year and the Tenant is responsible for the carpet cleaning costs.

I award the Landlord the amount of \$126.00 for carpet cleaning costs.

Remote Control

The Tenant accepted responsibility for failing to return a garage remote control. I award the Landlord the amount of \$50.00 for the replacement cost.

Security Deposit

I authorize the Landlords to keep the \$900.00 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 Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,285.50 comprised of \$3,600.00 for unpaid rent; \$409.50 for cleaning costs; \$126.00 for carpet costs; \$50.00 for a remote; and the \$100.00 fee paid by the Landlords for this hearing. After setting off the security deposit of \$900.00 towards the award of \$4,285.50 I find that the Landlord is entitled to a monetary order for the balance of \$3,385.50. 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 the rent owing under the tenancy agreement for April and May 2020. The Tenant permitted unauthorized occupants to live in the rental unit and is responsible for unpaid rent and cleaning costs at the end of the tenancy.

I authorize the Landlord can keep the security deposit in the amount of \$900.00 in partial satisfaction of the Landlord's awards.

I grant the Landlord a monetary order in the amount of \$3,385.50.

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 4, 2020

Residential Tenancy Branch