



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, FFL

Introduction

On September 11, 2020, the Landlord 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 damage or repairs; a monetary order for unpaid rent; and to keep the security deposit. On November 27, 2020 the Landlord amended her application to change the amount of her monetary claims.

The matter was set for a conference call hearing. The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that she served the Tenant with the Notice of Dispute Resolution Proceeding using registered mail sent on September 19, 2020. The Landlord provided a copy of the registered mail receipt and a photograph of the envelope that was sent. The Landlord testified that on September 28, 2020 she also served the Tenant with notice of the hearing in person.

The Landlord testified that she served a copy of her amended application to the Tenant in person on November 30, 2020. Based on the affirmed testimony and evidence from the Landlord, I find that the Tenant was served with notice of the hearing in accordance with sections 89 and 90 of the Act and failed to attend the hearing to respond to the Landlord's claims. The hearing proceeded.

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 Landlord's application included a claim against a security deposit; however, the Landlord testified during the hearing that the Tenant never paid a security deposit. The Landlord's claim to retain a security deposit is dismissed.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or repair costs?
- Is the Landlord entitled to other compensation for damage or loss?
- Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began in September 2018 and is currently on a month to month basis. The Landlord testified that rent was originally \$660.00 each month but was reduced to \$450.00 each month starting July 1, 2020 for a six-month period of time. The Landlord testified that there was no security deposit required or paid. The Landlord provided a copy of a tenancy agreement that indicates rent of \$660.00 was due by the first day of each month.

The Landlord testified that the residential property contains a duplex with a self-contained upper unit containing three bedrooms and a self-contained lower unit containing three bedrooms. The Landlord rents the rooms to tenants under separate tenancy agreements and the Tenants share the property as tenants in common.

The Tenant rents a room in the lower duplex unit.

The Landlord is seeking compensation for unpaid rent, cleaning costs and damage in the amount of \$5,274.00 as follows:

Unpaid Rent

The Landlord testified that the Tenant is living in the rental unit and has not paid the rent due under the tenancy agreement for the months of September, October, November and December 2020. The Landlord is seeking a monetary order for four months of unpaid rent in the amount of \$1,800.00.

Unpaid Rent for Guests

The Landlord testified that on August 18, 2020 the Tenant had four out of town guests come stay in the unit and the Tenant permitted his guests to stay in the vacant rooms within the upper and lower duplex without the Landlord's permission. The Landlord

approached the Tenant about this issue, and she testified that the Tenant told her he would pay her \$350.00 per guest to allow them to stay in the vacant rooms. The Landlord accepted the proposal that the Tenant could rent two of the empty downstairs rooms. The Landlord testified that the Tenant's guests left on September 20, 2020. The Landlord testified that there was no written tenancy agreement or security deposit collected from the Tenant with respect to this short-term tenancy arrangement. The Landlord testified that the Tenant has not paid her the agreed amount of rent for the two extra rooms. The Landlord is seeking compensation of \$1,400.00. The Landlord provided photographs of the Tenant's guests.

Loss of Rent

The Landlord is seeking to recover a loss of rent due to having to reimburse rent to another tenant after she moved out. The Landlord testified that the new tenant moved into the upper rental unit on September 2, 2020 and moved out on September 9, 2020 due to the lower Tenants guests causing disturbances and making a mess in the upper unit. The Landlord testified that the upper Tenant complained to her and was concerned. The Landlord testified that she permitted the upper tenant to end the tenancy and reimbursed the upper Tenant the amount of \$800.00. The Landlord is seeking to recover the \$800.00 from the lower Tenant.

Cleaning

The Landlord testified that the Tenant is responsible for cleaning costs associated with his guests use of the upper rental unit. The Landlord testified that the Tenant's guests left the upper rental unit unclean and the Tenant failed to clean up the mess. The Landlord was preparing for a new tenant to move into a room in the upper unit for September 2020 and she had to have the upper rental unit bathroom, kitchen, and bedrooms cleaned. The Landlord provided an invoice from a cleaning company dated August 30, 2020 in the amount of \$170.00.

The Landlord testified that the Tenant is also responsible for cleaning costs associated with cleaning the lower rental unit. The Landlord testified that the Tenants guests left the unit unclean and the Landlord hired a cleaner to clean the unit. The Landlord provided an invoice from a cleaning company dated September 30, 2020 in the amount of \$140.00.

The Landlord provided 117 color photographs showing the condition of the rental unit and also damage to a door, ottoman, chairs and table.

Damaged Door

The Landlord testified that on September 16, 2020 she discovered that the door to the rental unit had been damaged. She testified that the Tenant is responsible for damaging the door. The Landlord had the door replaced and has provided a receipt dated November 28, 2020 in the amount of \$175.84 for the replacement cost. The Landlord provided two photographs of the damaged door.

Mattress Protector

The Landlord testified that the Tenants friends did not use bed sheets on the bedroom mattress. The Landlord testified that she purchased a mattress protector rather than buying a new mattress. The Landlord provided a receipt for \$67.17 for the purchase of a mattress cover.

Storage Bench

The Landlord testified that the Tenant and his guests left a storage ottoman outside on the deck which was damaged by rain. The Landlord testified that the ottoman was only one year old. The Landlord provided a receipt date November 28, 2020 in the amount of \$53.76 for the purchase of a new ottoman.

Table and Chairs

The Landlord testified that the Tenant and his guests left a dining table and chairs outside on the deck which was damaged by rain. The Landlord testified that the table and chairs were only one and a half years old year old. The Landlord provided a receipt date November 28, 2020 in the amount of \$167.97 for the purchase of a table and chairs.

Tablecloth

The Landlord testified that the Tenant and his guests left a plastic tablecloth out on the deck which was ruined by the rain. The Landlord purchased a replacement tablecloth.

The Landlord provided a receipt date November 28, 2020 in the amount of \$20.19 for the purchase of a tablecloth.

Pest Control

The Landlord testified that the Tenant is responsible for his guests leaving food out which attracted rats. The Landlord had pest control attend the rental unit. The Landlord provided an invoice dated November 12, 2020 in the amount of \$682.50. The invoice provides that service included traps and blocking of entry points.

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.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that 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. A tenant is not responsible for reasonable wear and tear to the rental unit or site. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

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

Unpaid Rent

I find that the Tenant was required to pay the Landlord rent of \$450.00 by the first day of each month. I find that the Tenant failed to pay the rent owing under the tenancy agreement to the Landlord for the months of September, October, November, and December 2020.

I award the Landlord the amount of \$1,800.00 for unpaid rent.

Unpaid Rent for Guests

I accept the Landlord's affirmed testimony that the Landlord and Tenant entered into an agreement for the Tenant to rent two additional two bedrooms for a one-month period at a cost of \$1,400.00. I accept her testimony that the Tenant failed to pay this rent.

I award the Landlord the amount of \$1,400.00 for unpaid rent.

Loss of Rent

While I find that the Tenant is responsible for the actions of his guests, I find that the Landlord has to mitigate against any loss. I find that the Tenant's guests were only in the upstairs area for a short period and any disturbance to the upper tenant by them using the upper unit was of a short duration. It was the Landlords choice to permit the upper tenant to move out and to reimburse a portion of the rent. Landlords claim to recover a loss of rent is not successful and is dismissed.

Cleaning

I have considered the Landlords testimony and reviewed the photographic evidence and I accept that the upper and lower rental unit were left in an unclean condition/state. With consideration that the upper tenant moved out, I accept the Landlord's testimony that the lower Tenant is responsible for leaving the rental units unclean and is therefore responsible for the cleaning costs.

I award the Landlord the amount of \$310.00 for cleaning costs.

Damaged Door

I have considered the Landlords testimony and evidence showing a damaged door and a receipt for the replacement cost of purchasing a new door. The Landlord testified that

the Tenant was responsible for the damaged door. I find that the Tenant is responsible for the replacement cost of the damaged door.

I award the Landlord the amount of \$175.84 for the cost to replace the door.

Mattress Protector

I find that there is insufficient evidence that the Landlord provided a mattress cover or sheets to the Tenant and or his guests or that a mattress cover was required to be used as a condition of tenancy. If the Landlord wanted a mattress cover to be used, I find that the Landlord should have provided one or have included it as a term in the tenancy agreement.

The Landlords claim is dismissed.

Storage Bench

The Landlord provided a photograph of the storage bench located on the deck with visible damage.

I accept the Landlords testimony that the Tenant is responsible for the damage. I award the Landlord the amount of \$53.76 for the cost to replace the bench.

Table and Chairs

The Landlord provided photographs of the table and chairs left on the deck that appear dirty and water damaged/ stained.

I accept the Landlords testimony that the Tenant is responsible for the damage. I award the Landlord the amount of \$167.97 for the cost to replace the table and chairs.

Tablecloth

While I could not locate a photograph showing a damaged tablecloth, the Landlord testified that the tablecloth was left in the rain and needed to be replaced. Based on the Landlords other evidence that shows areas of the rental unit, including the deck to be extremely unclean, I accept the Landlords claim. I find that the tenant is responsible for the replacement cost of a tablecloth.

I award the Landlord the amount of \$20.19 for the cost to replace the tablecloth.

Pest Control

Since the rental property is an up/down duplex with three rooms up and three down, I find that there is insufficient evidence that the Tenant is the sole cause of a rat problem. I note that the Tenant should not be held responsible for the pest control company having to close up entry spots into the residential property. The Landlords claim to recover costs for pest control is dismissed.

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 in the amount of \$3,927.76 comprised of \$3,200.00 in unpaid rent, \$310.00 for cleaning costs, and \$417.76 for damage.

After including the cost of the \$100.00 filing fee, I find that the Landlord is entitled to a monetary order in the amount of \$4,027.76. 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 was served with the Notice of Dispute Resolution Proceeding and failed to attend the hearing to respond to the Landlord's claims.

The Landlord has established a monetary claim for unpaid rent; cleaning costs, and damage, and is granted a monetary order in the amount of \$4,027.76.

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: January 13, 2021

Residential Tenancy Branch