



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FFL

Introduction

On October 9, 2020, the Landlord submitted an Application for Dispute Resolution seeking a monetary order for loss of rent and for damage to the rental unit.

The matter was set for a conference call hearing. The Landlord and the Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 to the unit?

Background and Evidence

The parties testified that the tenancy began in July 2017 and agreed to a one-year term which continued thereafter on a month to month basis. Rent in the amount of \$1,900.00 was to be paid to the Landlord by the first day of each month. There was no security deposit or pet damage deposit required or paid. The Landlord did not prepare a written tenancy agreement.

The Landlord and Tenant testified that the tenancy ended when the Tenant vacated the rental unit in the middle of July 2019.

Unpaid Rent

The Landlord is seeking \$3,800.00 for unpaid July 2019 and August 2019 rent. The Landlord provided testimony that the Tenant was issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2019 when the July rent was not paid when it was due.

The Landlord testified that the Tenant vacated the rental unit mid July 2019 and the Landlord was not able to re-rent the unit for August 2019. The Landlord testified that he did not receive any rental income for the rental unit for July 2019 and August 2019. The Landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 3, 2019 in the amount of \$1,900.00.

In reply, the Tenant testified that they complied with the Landlords 10 Day Notice and moved out. The Tenant provided testimony that they felt bullied and harassed. The Tenant stated that the Landlord had the house for sale and sold it in August 2019. The Tenant confirmed that July 2019 rent was not paid and stated that they should not be responsible to pay August 2019 rent.

In reply, the Landlord provided testimony that the rental home was sold on October 15, 2019.

Damage

The Landlord is seeking compensation for the following items:

Window Cleaning	\$120.00
Carpet Cleaning	\$246.75
Unit Cleaning	\$150.00
Weather stripping	\$91.25
Flooring	\$2,383.00

Window Cleaning

The Landlord testified that the windows in the rental unit were left unclean at the end of the tenancy. The Landlord hired a company to clean the windows and has provided an invoice dated July 25, 2019 for \$120.00 for cleaning the windows. The Landlord stated that there were flies on a windowsill.

In reply, the Tenant testified that she routinely cleaned the windows during the tenancy and cleaned them prior to leaving. The tenant stated that she asked the general

contractor about the windows and was told that they did not require more cleaning. The Tenant referred to her documentary evidence of photographs showing the cleanliness of the rental unit at the end of the tenancy.

Carpet Cleaning

The Landlord testified that the Tenants are responsible for leaving the carpets unclean at the end of the tenancy. The Landlord hired a carpet cleaning company to clean the bedroom carpets and stairs. The Landlord indicated that they have provided photographs of the rental unit at the end of the tenancy and an invoice dated July 15, 2019 for carpet cleaning in the amount of \$246.75.

In reply, the Tenant testified that she does not recall if she steam cleaned the carpets before she moved out. She testified that the carpets had been recently cleaned.

Unit Cleaning

The Landlord testified that the rental unit was not left in a condition to meet the requirement of being clean. The Landlord stated that behind the refrigerator was left unclean. The Landlord hired a cleaning company to clean the rental unit and provided an invoice dated July 15, 2019 and indicated that they have provided photographs of the rental unit at the end of the tenancy.

In reply, the Tenant disagrees with the Landlords claim for cleaning. The Tenant testified that she did a thorough job of cleaning and the rental unit was left clean on July 11, 2019. She testified that she did not clean under the stove because it was not on wheels.

Weather Stripping

The Landlord testified that the Tenants is responsible for damage the Tenants' cat did to the weather-stripping seal on the front and back doors. The Landlord provided a copy of an invoice dated July 15, 2019 and a photograph of the damage.

In reply, the Tenant provided testimony accepting the claim and acknowledging that her cat caused the damage.

Flooring

The Landlord is seeking compensation of \$2383.50 for what it would cost to repair the custom walnut flooring. The Landlord testified that the flooring in the kitchen, dining room, and Livingroom was damaged. The Landlord indicated that they have provided photographs of the flooring. The Landlord testified that he has owned the house for 14 years and the flooring was installed in 2014, three years prior to renting it out.

The Landlord has not had the flooring repaired or replaced and sold the house in October 2019, two months after the tenancy ended. The Landlord was asked why he is seeking compensation for repair or replacement that will never be performed and replied that he took a loss on the sale of the house due to the wood floors.

In reply, the Tenant testified that the Landlord has not had the work done and there is no evidence from the Landlord that he suffered a loss when the house was sold. The Tenant testified that the Landlord did not perform a condition inspection of the house at the start of the tenancy and the Landlord has not provided any photographs showing the condition of the floors at the start of the tenancy.

The Tenant testified that the flooring was already damaged when the tenancy began.

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 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 parties, and on a balance of probabilities, I make the following findings:

The Landlord stated in the hearing that the Landlord has provided a few photographs in support of various claims. After review of the Landlords' documentary evidence, I reviewed 7 video files showing interactions between the Landlords and Tenant; however, there is no photographic evidence showing the interior of the rental unit.

The Tenants provided 31 photographs showing the condition and state of repair of the rental unit at the end of the tenancy. After reviewing the evidence, I find that the rental unit was let clean or reasonably clean.

Loss of Rent

I find that the Tenant is responsible for a fundamental breach of the tenancy agreement regarding payment of rent. The Tenant failed to pay the rent due on July 1, 2019 and the Landlord issued a 10 Day Notice. The Tenants accepted the 10 Day Notice and vacated the rental unit. While the tenancy ended on the date the Tenants vacated the unit, the Tenants remain responsible for any loss of rent suffered by the Landlord due to their breach. It would not be reasonable to excuse a tenant from being responsible to pay rent or pay for a loss of rent when a Tenant fundamentally breaches a tenancy agreement putting the Landlord in a position to suffer a loss. The earliest date the Tenants could have legally ended the tenancy is August 31, 2019. The challenge of finding a new Tenant to move into the unit while the house was up for sale is not relevant to the earliest date the Tenants could have legally ended the tenancy.

The Landlord testified that he did not receive any rental income for the unit for the month of August 2019.

I award the Landlord the amount claimed of \$3,800.00 for unpaid July 2019 and August 2019 rent.

Window Cleaning

The Landlords' claim for the cost to clean the windows is dismissed. The Tenant testified that the windows were clean, and the Landlord has not provided sufficient evidence to prove that windows were left in a condition that required additional cleaning at the end of the tenancy.

Carpet Cleaning

The Tenants have provided the stronger evidence that the carpets in the rental unit were left clean. The Landlord did not provide any photographs showing unclean carpets. The Tenant's photographs show bedroom carpets that appear to be clean.

The Landlords claim for carpet cleaning costs is dismissed.

Unit Cleaning

The Landlords claim to recover cleaning costs is also dismissed due to insufficient evidence. There are no photographs from the Landlord showing an unclean rental unit at the end of the tenancy. The Tenants have provided photographic evidence showing the home was left reasonably clean.

Weather Stripping

The Tenant accepted responsibility for damage to the weatherstripping and the amount of \$91.25 for repair costs.

I award the Landlord the amount of \$91.25.

Flooring

I find that the Landlords' claim for flooring costs fails for a number of reasons. The Landlord failed to complete a move in inspection which would show the condition and state of repair of the flooring at the start of the tenancy. In addition, there are no photographs from the Landlord showing damage to flooring at the end of the tenancy. Furthermore, the Landlord provided insufficient evidence to prove that he took a financial loss on the sale price of the home because of the condition of the flooring.

To prove a claim there must be proof that the damage or loss exists and 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 and proof of the actual amount required to compensate for the claimed loss.

The Landlords claim for compensation due to damaged flooring is dismissed.

Filing Fee

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were partially successful, I order

the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

Monetary Award

I find that the Landlord has established a total monetary claim of \$3,991.25 comprised of unpaid rent; damage, and the \$100.00 fee paid by the Landlord for this hearing.

I find that the Landlord is entitled to a monetary order in the amount of \$3,991.25. 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 failed to pay the rent owing under the tenancy agreement for July 2019 and are also responsible for a loss of August 21, 2019 rent.

The Landlord is granted a monetary order for unpaid rent and damage in the amount of \$3,991.25.

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: February 3, 2021

Residential Tenancy Branch