



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent and utilities, for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on March 1, 2020 and was to expire on March 1, 2021. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on January 2, 2021.

The parties agreed a move-in condition inspection report was completed. The landlord stated that the tenants did not participate in the move-out condition inspection; however, they gave the tenants two opportunities to attend.

The tenants stated that on December 28, 2020 the landlord attend to do an inspection; however, the landlord did not have the paperwork at that time. The tenants stated that they did not agree to any other time or date.

The landlord claims as follows:

a.	Unpaid utilities	\$ 233.44
b.	Overhold premises (3) days of rent @ \$66.00 per day	\$ 198.00
c.	Parking and storage fee 3 days at start of tenancy	\$ 150.00
d.	Cleaning outside	\$ 150.00
e.	Carpet cleaning	\$ 130.00
f.	Refrigerator repair and stove repair	\$ 268.00
g.	Filing fee	\$ 100.00
	Total claimed	\$ 1,229.44

Unpaid utilities

At the start of the hearing the tenants agreed that they did not pay the utilities only because they had not received the invoices at the end of the tenancy. The tenants do not dispute the amount owed.

Overhold premises

The landlord testified that the tenants were to be out of the rental unit on December 31, 2020 at 1:00pm; however, they did not vacate the premise until January 2, 2021. The landlord stated they should be entitled to 3 days of rent. The landlord seeks to recover the cost of \$198.00.

The tenants testified that they had vacated the premise, but they still has some belongings there until January 2, 2021. The tenants stated that they did not believe this was an issue or that they would be charged.

Parking and storage fee

The landlord testified that they allowed the tenants to store and park their belongings on the property three days before the tenancy was to start. The landlord stated that they never told the tenants that they would be charged for this. The landlord seeks to recover the amount of \$150.00.

Cleaning outside

The landlord testified that the tenants are responsible to clean the hallway and under the stairs. The landlord stated that this area was full of weeds and needed to be cleaned. The landlord stated that the tenants also did not clean the exterior windows. The landlord seeks to recover the amount of \$150.00. Filed in evidence is a receipt

The tenant testified that this not a hallway that is a brick walkway that leads into the rental unit. The tenant stated that it was never discussed that they were responsible for going between the paving stone to remove any weeds. The tenants stated it was impossible to clean the exterior windows are they are below the concrete and there is a grate covering this area.

Carpet cleaning

The landlord testified that the tenants did not shampoo the carpets at the end of the tenancy as they were just vacuumed. The landlord stated that they paid to have them cleaned. Filed in evidence is a receipt.

The tenants testified that they rented a carpet cleaner and did their best to clean them.

Refrigerator repair and stove repair

The landlord testified that the refrigerator door handle was missing. The landlord stated that they had to pay \$48.00 for a new handle and had to have it installed. The landlords seek to recover the cost of \$68.00. Filed in evidence is a receipt.

The landlord testified that one of the gas elements on the stove was not working at the end of the tenancy. The landlord stated that they are not sure why it was not working. The landlord seeks to recover the cost of the repair in the amount of \$200.00. Filed in evidence is a receipt.

The tenants testified that the door handle was cracked and old and when they moved out their son broke it and it was disposed. The tenants stated they did not damage the stove element.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I am satisfied that the landlord made their application for dispute resolution within 15 days of receiving the tenants' forwarding address. The landlord had a right to retain the security deposit as a portion of their claim was related to unpaid rent and utilities.

I am also not satisfied that the tenants had extinguished their rights to the return of their security deposit. The Residential Tenancy Regulations Part 3 requires the landlord to provide to the tenants a Notice of Final Opportunity to Schedule an Inspection, in the proper form. The landlord provided no evidence that they served the tenants with the required form. I cannot find the tenants extinguished their rights. Therefore, I make the following finding based on the merits of the landlord's application.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Unpaid utilities

At the start of the hearing the tenants agreed that they did not pay the utilities only because they had not received the invoices. I find the landlord is entitled to recover the cost of unpaid utilities in the amount of **\$233.44**.

Overhold premises

In this case the tenants were required under the Act to vacate the premise on December 31, 2020 at 1:00 pm. The tenants did not give the landlord vacant possession until January 2, 2021. While I accept the tenants were overholding the premise; however, that was for two days, as rent was paid for the month of December 2020, even though they are required to vacate by 1:00pm. I find the landlord is entitled to two days of rent in the total amount of **\$132.00**.

Parking and storage fee

I dismiss this portion of the landlord's claim. While I accept the landlord allowed the tenants to park and store some belongings prior to their tenancy commencing. However, it is unreasonable to seek cost for this after the tenancy ended. If the landlord wanted such fee this should have been discussed prior to allowing the tenants to move these items on to the property. I find the tenants have not breached the Act or tenancy agreement. Therefore, I dismiss this portion of the landlord's claim.

Cleaning outside

In this case, I am not satisfied that the landlord has met the burden of proof at the tenants left the hallway/walkway unreasonably clean. The landlord did not provide any evidence to support this, such as photographs. Further, the invoice shows this area was power washed, the tenants are not responsible to power wash the landlord's property. Therefore, I dismiss this portion of the landlord's claim.

While I accept the tenants did not clean the exterior window as it was below the concrete and protected by a grate; however, I am not satisfied under the Residential Tenancy Policy Guideline (the "PG") 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, that it was the tenants responsibility to clean the exterior window. The PG states the landlord is responsible for cleaning the outside of the windows, at reasonable intervals. Therefore, I dismiss this portion of the landlord's claim.

Carpet cleaning

In this case, the evidence of the landlord was that the tenants did not shampoo the carpets at the end of the tenancy. The evidence of the tenants was they rented a carpet cleaner.

I am not satisfied that the landlord has proven the carpets were left dirty at the end of the tenancy. While the landlord provided the tenants with a move-out check list which states the carpets must be professionally cleaned. That is not a term of the tenancy agreement.

Under the PG 1, the tenants are generally expected to clean the carpets if vacating after a tenancy of one year. This tenancy did not exceed one year, and the tenants did not have a pet.

The landlord did not provide any supporting evidence to prove that the tenants had deliberately or carelessly stained the carpet, such as photographs. Therefore, I dismiss this portion of the landlord's claim.

Refrigerator repair and stove repair

In this case the refrigerator door handle was missing at the end of the tenancy. Even, if I accept the tenants' evidence that the door handle was cracked, it was not the tenants

right to dispose of the handle, as the landlord may have been able to have it repaired. I find the tenants breached the Act, when they did not leave the refrigerator door handle in the rental unit at the end of the tenancy. I find the landlord is entitled to recover the cost of the missing refrigerator door handle in the amount of **\$68.00**.

I am not satisfied that the tenants are responsible for the repair gas stove element. There was no evidence that it was not working due to the neglect or actions of the tenants. The repair of appliance is the landlord's responsibility unless proven it was damaged by neglect of the tenants. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$465.44** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the above amount of \$465.44 from the security deposit of **\$1,000.00** full satisfaction of the claim, this leaves a balance due of the security deposit in the amount of \$534.56. As, I have found the tenants did not extinguish their right to the security deposit, I find the landlord must return the balance due of the security deposit to the tenants forthwith. I grant the tenants a monetary order, should the landlord fail to comply with this order.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenants are granted a formal order for the balance due of their deposit.

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 14, 2021

Residential Tenancy Branch