



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, FFL

Introduction

On March 9, 2021, the Landlords submitted an Application for Dispute Resolution under the residential Tenancy Act (“the Act”) seeking a monetary order for unpaid rent, damage to the rental unit, and for money owed or compensation for damage or loss.

The matter was set for a conference call hearing. The Landlords and Tenant attended the hearing. The Tenant was assisted by an advocate. 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. The parties were informed that recording the hearing is not permitted.

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

A previous dispute resolution hearing between the parties took place on September 4, 2020. The Arbitrator found that the Landlord illegally locked the Tenant out of the rental unit on March 2, 2020.

The Tenant confirmed that she received a copy of the Landlords’ documentary evidence.

The Landlord stated that he did not receive a copy of the Tenant's documentary evidence. The Tenant's advocate stated that he is unsure whether the Tenants evidence was ever sent to the Landlord.

I find that the Landlord did not receive a copy of the Tenant's documentary evidence and the Landlord has not had an opportunity to consider the evidence and respond to it. Therefore, I find that it would be unfair for me to accept and consider the Tenant's evidence. Since the Tenant did not serve her evidence to the Landlord in accordance with rules of procedural fairness and the Residential Tenancy Branch Rules of Procedure, the Tenant's evidence is excluded and will not be considered.

The Landlord did not provide a monetary order worksheet detailing the items that were damaged in the rental unit and assigning a monetary value to each item. An applicant who makes a claim must provide the full particulars of the claim to the Residential Tenancy Branch and to the Respondent. The Respondent / Tenant has a right to receive notice of the case against her and to have an opportunity to consider and respond to the claim. Since the Landlord failed to provide the full particulars of the claim for damage, the Landlords' claim for damage to the rental unit is dismissed with leave to reapply.

The hearing proceeded on the Landlords' remaining claims.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent/ storage?
- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Landlords and Tenant testified that the tenancy began in July 2019. Rent in the amount of \$400.00 was due to be paid to the Landlord by the first day of each month. The Tenancy ended on March 2, 2020.

The Landlord is seeking compensation in the amount of \$11,800.00 for the following items:

- March and April Rent / Storage \$800.00
- Harassment and Emotional Harm \$5,500.00

March and April Rent

The Landlord stated that he is seeking \$800.00 as a storage fee for the Tenant's possessions for the months of March and April 2020. The Landlord confirmed that he had changed the lock on the door of the rental unit.

In reply, the Tenant's advocate stated that there was a previous hearing where the Arbitrator found that the Landlord locked the Tenant out of the rental unit on March 2, 2020. The Tenant's advocate provided the file number for the previous hearing.

Harassment and Emotional Harm

The Landlord is seeking compensation of \$5,500.00 for harassment and emotional harm caused by the Tenant. The Landlord was asked how she determined the amount of the claim and she replied that \$2,500.00 is for the male Landlord and the other \$2,500 is for herself. The Landlord stated it's the same amount of compensation that the Tenant got in the previous hearing. The Landlord did not explain what the additional \$500.00 is for.

The Landlord stated that the Tenant attended the rental unit and kicked the door and was swinging an umbrella at the Landlord after the Landlord changed the locks to the unit. The Landlord stated that the police attended, and the parties reached a mutual agreement.

The Landlord stated that when they moved into the home during Christmas of 2019 they were constantly verbally abused by the Tenant. The Landlord alleged that the Tenant was using cocaine in the rental home.

The Landlord was asked whether they issued a notice to end tenancy to the Tenant regarding the alleged verbal abuse and behaviour of the Tenant, and the Landlord replied "no".

In reply, the Tenant stated that she is speechless. The Tenant stated that not a thing the Landlord said is true.

The Tenant's advocate stated that the Landlord is upset about being held accountable at the previous hearing and the Landlords' claim is retaliatory.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

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.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

After considering the testimony of the Landlord and Tenants, and on balance of probabilities, I make the following findings:

Storage Fee

I find that in an earlier decision an Arbitrator found that the Landlord illegally locked the Tenant out of the rental unit on March 2, 2020. I find that since the Landlord illegally locked the Tenant out, it is not reasonable to charge the Tenant a storage fee. I note that the amount claimed is the same amount as the monthly rent.

The Landlords' claim for compensation for storage of the Tenants possessions is dismissed without leave to reapply.

Harassment and Emotional Harm

Residential Tenancy Policy Guideline # 16 Claims in Damages provides that a party seeking compensation should present compelling evidence of the value of the damage or loss in question.

I have considered the Landlords' testimony that they were harassed and suffered emotional harm. The Landlord provided very little detail surrounding harassment by the Tenant. It would be reasonable to expect that a Landlord would take action against a tenant if they were faced with harassment and were experiencing emotional harm. The Landlord stated that they did not issue any notice to end tenancy to the Tenant with respect to the Tenant's behavior. I find that the alleged incident of kicking a door and swinging an umbrella in response to being locked out of her rental unit is not compelling evidence that the Tenant was harassing the Landlord or causing emotional harm. I find that in the earlier decision an Arbitrator found that the Landlord was responsible for aggravated damages with respect to this incident.

I also note that the amount of compensation each Landlord is claiming is the amount of compensation that was awarded to the Tenant for aggravated damages. This suggests that the claim is retaliatory rather than determined by an actual loss suffered by the Landlord.

I find that the Landlords have provided insufficient evidence that the Tenant harassed them causing emotional harm.

The Landlords claim for \$5,500.00 is dismissed without leave to reapply.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was not successful with their application. I decline to order the Tenant to repay the \$100.00 filing fee.

Conclusion

The Landlord was not successful with the claims for storage costs and compensation for harassment and emotional harm.

The Landlords' claims are dismissed without leave to reapply.

The Landlords have leave to reapply for damage to the rental unit.

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: August 18, 2021