



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDCL, FFL

Introduction

On March 13, 2021, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent; for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for a monetary order for damage to the rental unit, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. 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.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to a monetary order due to damage to the rental unit?
- Are the Landlords entitled to a monetary order for money owed or damage or loss?

Background and Evidence

The Landlords and Tenants testified that the tenancy originally began in October 2013, on a month-to-month basis. The Landlords purchased the residential property in September 2015 and assumed the tenancy. At the end of tenancy, rent in the amount of \$840.00 was due to be paid to the Landlord each month. The original Landlord and the new Landlord did not prepare a tenancy agreement in writing. The original Landlord and the new Landlord did not conduct a move in inspection with the Tenants and did not prepare a condition inspection report. The parties provided testimony that the tenancy ended on June 30, 2020.

Unpaid Rent \$1,680.00

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for the month of June 2020 and July 2020. The Landlord stated that the Tenants failed to give proper written notice to end the tenancy for the end of June 2020.

The Landlord is seeking \$1,680.00 for unpaid June 2020 and unpaid July 2020 rent.

In reply, the Tenants testified that they paid the June 2020 rent in cash to the female Landlord on June 21, 2020. The Tenant testified that the Landlord texted them on June 21, 2021 and said she is popping down to get the rent. The Tenants stated that they asked for a receipt; however, the Landlord did not provide one.

The Tenants testified that in May 2020 they discussed with the Landlords that they were moving out of the unit.

In reply, the Landlord testified that the Tenants did not give them cash for June 2020 rent. The Landlord testified that him and his wife were out of town on in June 2021. The Landlord stated that the Tenants always paid their rent using e-transfer, so their suggestion that they paid the rent in cash is a departure from how they always paid the rent.

The Tenants replied that by agreeing that they paid the rent using e-transfer 95% of the time and stated that on the other occasions rent was paid in cash.

Loss of Rent \$1,680.00

The Landlord testified that the rental unit was left in such a poor state of repair that the rental unit was not in a suitable condition to rent out. The Landlord testified that the

flooring needed to be replaced and the kitchen and bathroom needed renovation and there were 16 bags of garbage left behind. The Landlord stated the unit needed a full renovation.

The Landlord testified that he still has not rented the unit out and its about 80% complete. The Landlord submitted that it is reasonable to award him compensation of \$1,680.00 for a loss of an additional two months' rent.

In reply, the Tenants provided testimony that they did not clean the rental unit as much as needed and are responsible for cleaning costs. The Tenants acknowledged that the carpets were gross. The Tenants testified that they are not responsible for renovation costs and that it would not take two months for the Landlord to clean the unit.

The Tenants testified that the original Landlord and the new Landlord did not conduct a move in inspection with the Tenants and did not prepare a condition inspection report at the start of the tenancy.

The Landlord confirmed that a condition inspection report was not completed with the tenants at the start of the tenancy.

Flooring \$1,532.71 & \$643.22

The Landlord testified that he replaced carpeting in the Livingroom and bedrooms. He testified that the Tenants left the carpets in a poor condition.

The Tenants submitted that the carpets were left dirty and were 13 years old.

The Landlord acknowledged that the carpets were 13 years old.

Kitchen Cabinet Replacement \$9,141.25

The Landlord testified that he found a kitchen cabinet door torn off. He testified that he did not attempt to repair the door because the door was not found. The Landlord testified that the cabinets are original from 1998 when the suite was built.

The Landlord testified that he paid \$9,141.25 for new kitchen cabinets. He testified that the quality of the cabinets is slightly lower or the same as the previous cabinets. The Landlord later clarified that the original countertop was laminate, and the quartz countertop is an upgrade.

In reply, the Tenants submitted that the Landlord's evidence does not show missing cabinet doors; however, there was a cabinet door missing on the kitchen island at the start of the tenancy. The Tenants submitted that the door came off during a previous tenancy. The Tenants stated that are not responsible as the door was missing at the start of their tenancy. The Tenants stated that all the other doors were attached when the tenancy ended.

Garbage Disposal \$50.19

The Landlord testified that the Tenants left garbage behind in the rental unit. The Landlord stated that bikes, blankets, pillows, food, and other miscellaneous garbage needed to be disposed of. The Landlord testified that he disposed of 16 bags of garbage.

In replay the Tenants testified that they forgot food in the fridge and left her bike behind. She testified that they had to go and did not get a cleaner. The Tenant agreed to pay the amount of \$50.19 as claimed by the Landlord.

Washer Replacement \$475.00

The Landlord testified that the rubber liner around the inside of the washing machine was found to be full of black mold. The Landlord testified that it could not be salvaged and was taken to the dump.

The Landlord testified that he has not purchased a replacement washing machine. When asked the age of the washer, the Landlord stated that he presumes that it was original from when he purchased the property.

In reply, the Tenants stated that the washing machine was present in 2013 and it was in used condition at that time. The Tenants testified that it was a front-loading washer, and the rubber seal was stained. The Tenant testified that they asked the Landlord to replace the rubber seal in February 2020. The Tenant testified that the Landlord never did any maintenance on the washing machine.

In reply, the Landlord stated that the Tenants complaint was related to leaky tap and that the plumber who attended the unit was dealing with the tap not the washer.

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.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

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.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Residential Tenancy Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications for damages. The Guideline provides that an arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. The Guideline provides the useful life of building elements including:

- Carpets/Flooring 10 years
- Cabinets 25 years
- Washer 15 years

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

Unpaid Rent

I find that the Tenants failed to give the Landlord proper written notice to end the tenancy for the end of June 2020. The earliest date the tenancy could legally end is July 31, 2020. The Tenants are responsible to pay the rent under the tenancy agreement for July 2020.

With respect to the payment of rent for June 2020, the Landlord and Tenant disagree on whether or not the June 2020 rent was paid. I have reviewed the documentary evidence provided by the parties. The Tenants did not provide any documentary evidence such as a bank record showing a withdrawal of cash in support that they paid the rent in cash. The Tenants did not provide documentary evidence that on June 21, 2020 the Landlord texted them to say she would be popping down to take the rent. On the other hand, the Landlords' documentary evidence does not provide any evidence to support that the Landlords were out of town on June 21, 2020.

I note that the Landlords applied for dispute resolution in March 2021 which is 10 months after the June 2020 rent was due. Other than some text messages between the parties in June 2020 regarding when the Tenants would be able to pay the rent, there is no evidence before me that the Landlord continued to pursue collection of June 2020 rent from the Tenants after June 2020. In addition, the Tenants testified that on June 21, 2020 the paid cash to the Landlord, Ms. J.S. Ms. J.S. did not attend the hearing to provide direct testimony in response to the Tenants' testimony.

The Landlord bears the burden of proof, and when two parties provide equally believable testimony, the applicant has the burden of providing the stronger evidence.

I find that the Landlord has not provided sufficient evidence to establish that the Tenants failed to pay the rent owing under the tenancy agreement for June 2020.

The Landlords claim for unpaid June 2020 rent is dismissed without leave to reapply. The Landlords claim for July 2020 rent in the amount of \$840.00 is granted.

Flooring

I accept the policy guideline which provides that the useful life for carpeting is 10 years. I find that the carpets in the rental unit were 13 years old and therefore were beyond their useful life.

I note that the Landlord provided no testimony on whether or not he attempted to clean the carpets before he removed and replaced them. The photographs show the carpet is stained but no damage is seen. Nevertheless, I find that the carpets were beyond their expected life and the Tenants are not responsible for the replacement cost.

The Landlord's claim for the cost to replace carpets is dismissed without leave to reapply.

Kitchen Cabinet Replacement

I accept the policy guideline which provides that the useful life for cabinets is 25 years. I accept the Tenants submission that the cabinets were original to the home and were 22 years old.

I note that the original Landlord and the new Landlord did not perform a move in condition inspection and complete a report. This is important as the report could have shown any pre-existing damage to the kitchen cabinets when the tenancy began in 2013. The Tenants testified that the cabinet door was missing when their tenancy began.

I find that the Landlord does not have sufficient evidence to prove that the Tenants are responsible for a missing cabinet door. Furthermore, even if they were responsible for the door, absent additional evidence from the Landlord that the all the cabinets were damaged beyond repair, I find it is not reasonable to replace all the cabinets and expect the Tenants to pay the cost.

The Landlords claim for the cost to purchase new kitchen cabinets is dismissed without leave to reapply.

Disposal of Garbage

The Landlord is seeking \$50.19 for the cost to remove and dispose of garbage left by the Tenants at the rental unit.

The Tenants agreed to pay the disposal cost for the garbage.

I grant the Landlord the amount of \$50.19 for the cost to dispose of garbage.

Washer Replacement

A 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. The useful life of a washer is 15 years. I find that the washing machine was already present in the rental unit in 2013 and the washer was in a used condition at that time. I find that it is not possible to determine the age of the washer; however, it was at least 7 years old at the end of the tenancy.

The Landlord bears the burden of proof that the Tenants are responsible for damage or neglect, and I find insufficient evidence from the Landlord that the Tenants intentionally damaged the washer or used it in a neglectful manner.

The Landlords claim to be compensated to replace a used washer is dismissed without leave to reapply.

Loss of Future Rent

I find that the Tenants vacated the rental unit on June 30, 2020. The Landlord is granted \$840.00 for July 2020 rent because they failed to give the Landlord proper written notice to end the tenancy for the end of June 2020. The Landlord had the entire month of July 2020 to clean and repair the rental unit. I find that the Landlord has renovated the rental unit and the renovations are still not complete over one year later. I find that the Tenants are not responsible for a loss of rent based on the Landlord's decision to renovate the rental unit. I find that the Tenants would likely have been responsible to pay for cleaning costs for the rental unit and for cleaning carpets; however, the Landlord did not include those claims other than disposal of garbage costs.

I find that the building elements that the Landlord replaced were near or beyond their useful life and the amount of time it took the Landlord to replace the 13-year-old carpeting, the 22-year-old kitchen cabinets, and to renovate the rental unit, is not the Tenants' responsibility and is not recoverable from the Tenants.

The Landlord has established a monetary claim/ award of \$890.19 for unpaid July 2020 rent and disposal costs.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords was partly successful with his

application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Conclusion

The Landlord's claims for monetary compensation for unpaid July 2020 rent and a garbage disposal costs is successful. The Landlord's other claims for a loss of rent and the costs to replace building elements were not successful and are dismissed without leave to reapply.

I grant the Landlord a monetary order in the amount of \$990.19. For enforcement, the monetary order must be served on the Tenants and may be enforced in the Provincial Court.

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

Residential Tenancy Branch