



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 27, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's application package and evidence package and did not take issue with the service of these packages, or their contents. The Landlords confirmed receipt of the Tenant's evidence package. No issues were raised with respect to service. I find both parties sufficiently served each other for the purposes of this proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

I note the Landlords named an individual named H.S. as a Tenant/Respondent. However, the tenancy agreement provided shows he was not a Tenant, but rather an occupant. As such, I hereby amend the Landlords' application to remove H.S. as a respondent, as he has no contractual relationship with the Landlords.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The parties agree that the tenancy started around March 1, 2019, and ended on May 31, 2021, the day the Tenant vacated the rental unit. Monthly rent was set at \$1,200.00 and was due on the first of the month, and the Landlords still hold the security deposit of \$600.00.

The Landlords stated that when the tenancy started, they did not complete a condition inspection report, and although they did a "walk through" with the Tenant at the start of the tenancy, no report was completed, and no photos were taken. The Landlords stated that they also did not complete a move-out condition inspection report. The Landlords explained that when they went down to do a "walk through" at the end of the tenancy on May 31, 2021, they got into an argument with the Tenant about the return of the keys, and the security deposit. The Landlords stated that the Tenant refused to return the keys without getting the deposit back first, which led to an argument. The Landlord stated that they went in the following day, on June 1, 2021, and took a bunch of photos, and videos, to show how much damage the Tenant did while she was living there.

The Landlords stated that when they went into the unit to meet with the Tenant on May 31, 2021, the unit was not completely vacant, and they believe the Tenant was concealing some of the damage with her belongings. The Landlord stated that the Tenant also threatened to smash the mirror if the security deposit was not returned to her. The Landlord stated that when they returned to take photos and videos on June 1, 2021, the Tenant had punched holes in the walls, smashed mirrors, and purposefully damaged some items. There is no documentary evidence to show that the Landlords offered the Tenant a second opportunity for inspection, in writing.

The Tenant disagrees with what the Landlords are alleging and denies doing any damage to the rental unit. The Tenant stated the Landlords were aggressive with her, and she believes they purposefully sabotaged the unit, and the mirror, so that they could renovate the unit, and charge her for it. The Tenant stated many items in the unit were older, and the Landlord is trying to have her pay to refresh the unit.

The Landlords provided a worksheet (invoice from the contractor) which lays out the following 6 items:

1) \$1,650.00 – Laminate Flooring

The Landlords stated that the carpets were last replaced in 1997, but they were in good shape at the start of the tenancy. No evidence was provided as to the condition at the start of the tenancy, but the Landlord provided photos and videos showing the stains and rips in the carpet when the Tenant moved out. The Landlords stated they replaced the carpet with laminate of similar quality and price.

The Tenant stated that the carpets were old, stained, and ripped before she moved in, and she denies doing any damage to the carpets. The Tenant feels the Landlords likely went in to sabotage the carpets further after she moved out, and before they took photos.

2) \$950.00 – Cabinets

The Landlords stated that the cabinets are around 7 years old, and were in good shape at the start of the tenancy. However, no evidence was provided showing their condition at the time of move in or to corroborate their age. The Landlords stated they repaired the hinges and doors, because the Tenant had damaged them by misusing them. The Landlords pointed to missing screws in hinges, and shelf damage, as shown in the photos and videos taken after the Tenant moved out.

The Tenant stated that she did not do any damage to the cabinets and stated that they were in poor shape at the start of the tenancy.

3) \$725.00 – Blinds

The Landlord stated that the blinds were new 7 years ago, and when the Tenant moved out, every single set of blinds in the rental unit (6 blinds) had broken slats, and needed to be replaced. The Landlord pointed to photos and videos taken after the Tenant moved out.

The Tenant stated that some of the blinds were damaged at the start of the tenancy, and she denies that she did any damage to the blinds while she lived there. The Tenant

feels that the Landlord may have further damaged the blinds after she left to try and frame her and make her pay for new blinds.

- 4) \$1,450.00 – Paint
- 5) \$500.00 – Drywall patch

The Landlords stated that the rental unit was last repainted 7 years ago. The Landlords assert that the Tenant went and punched holes in the drywall before she moved out in several rooms, as shown in the videos. The Landlords stated that the Tenant also left the walls heavily marked, and soiled, such that they needed repainting. The Landlords assert the walls were in good shape at the start of the tenancy, but had no evidence as to their condition at the start.

The Tenant stated that she did not do any damage to the walls. The Tenant stated that there were many scratches, holes and marks on the wall before she moved in, and she also asserts that the Landlords sabotaged the walls before taking the photos. The Tenant stated that she strongly believes the Landlords were out to frame her, and make her pay for a suite renovation because of their poor relationship and their fight at the end of the tenancy.

- 6) \$475.00 – Mirror Replacement

The Landlords explained that the mirror in the bathroom was purposefully damaged by the Tenant, and that she likely did this after their argument on May 31, 2021. The Landlords stated they took the photos of the damaged mirror on June 1, 2021, and they assert that the mirror was not damaged on May 31, 2021.

The Tenant again denies that she did this damage and feels, again, that the Landlords are trying to frame her, keep her security deposit, and have her pay for the renovation of their unit. The Tenant stated that the mirror was in perfect shape when she moved out, so she has no idea what happened.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the

Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I find the Landlords failed to comply with the Act and the Regulations by not completing a condition inspection report. A verbal report and informal walk-through is not sufficient to comply with the requirements under the Act. The Landlords provided no evidence to show the condition of the rental unit at the start of the tenancy.

I note the Landlords have the burden to prove that the damage was caused by the Tenant, that it was not pre-existing, and that it was not from normal wear and tear. The Landlords also believe the Tenant sabotaged the rental unit after their meeting on May 31, 2021. However, the Tenant alleges the Landlords sabotaged the unit in order to get her to pay for the renovation of their unit. In any event, the parties do not agree on this matter, as each has provided a different version of events. However, the Landlord bears the burden of proof to establish that it was the Tenant who caused the damage.

In this case, I note the Landlords have provided no documentary evidence showing the condition of the rental unit at the start of the tenancy. There are also no photos or documentation as to the condition on May 31, 2021. There are only undated photos and videos, which the Landlords claim were taken on June 1, 2021, after the Tenant vacated.

The Landlords assert the Tenant was careless when she lived there and they also allege that, after their argument on May 31, 2021, she purposefully damaged several items. However, I find there is insufficient evidence showing the condition of any of the items at the start of the tenancy. Further, with respect to the damages that the Landlords assert the Tenant did after their dysfunctional meeting on May 31, 2021, I find there is insufficient evidence that this was done by the Tenant. The Tenant denies doing any of this damage, and asserts the Landlord purposefully did some of the damage to try to get her to pay for the renovations/refresh of the unit.

It is unclear how and when the various items were damaged, and by who, as there is a notable lack of documentation from the Landlord. There are only some undated photos and videos which were allegedly taken on June 1, 2021. Ultimately, the burden remains on the Landlords to prove the claim, and I find they have not sufficiently done this.

The Landlords' application is dismissed in full, without leave to reapply.

I order the Landlords to return the \$600.00 security deposit, forthwith.

Conclusion

The Landlord's application is dismissed, in full, without leave.

I order the Landlords to return the \$600.00 security deposit, forthwith.

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$600.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that 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: January 27, 2022

Residential Tenancy Branch