Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR MND MNDC 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 July 6, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

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

Both parties attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. The Tenants did not provide any documentary evidence.

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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent?

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

Background and Evidence

Both parties agree that monthly rent was $1,400.00 and was due on the 15th of the month. Both parties also agree that the Landlord holds a security deposit in the amount of $700.00, and a pet deposit of $400.00. The Tenants moved in on or around August 15, 2020, and moved out on or around March 14, 2021.

The Landlord stated that a move-in inspection was done and that the Tenants signed a copy of this report on or around August 12, 2020. The Tenants deny that any move-in inspection was completed, and they deny every being presented with or signing a copy of the condition inspection report at move in. The Landlord stated that he has a copy of the move-in inspection signed by the Tenants, but he did not provide a copy into evidence, and only provided a copy signed by the Landlord, not the Tenants.

The Tenants moved out on March 14, 2021, and returned the keys that day. The Landlord acknowledged getting the keys that day, and stated he tried to do the move-out inspection that day, but the Tenants refused. The Landlord stated that he kept trying to schedule the move-out inspection in the months following, but the Tenants refused and were evasive.

The Tenants deny that they were asked to do the move-out inspection or that they were being obstructive.

The Landlord is seeking the following items:

1) $3,641.50 – Car damage

The Landlord is seeking the above noted amounts because he asserts the Tenants damaged his car while it was parked in his driveway. The Landlord did not point to any of his evidence in support of this, although he did provide a few photos of the parking area and the damage.

The Tenants deny doing any of this damage.

2) $2,006.00 – Labour and parts for repairs to suite

The Landlord stated that the walls and ceiling had holes and dents and scratches all over, which required repair and repainting at the end of the tenancy. The Landlord stated that the unit was new at the start of the tenancy, so all this damage was caused by the Tenants. The Landlord noted this amount is comprised of $795.00 for labour for painting and wall repair, $267.00 for the related supplies to fix the walls, plus $630.00 for labour to repair the sliding pocket door to the bathroom, plus $135.00 for cleaning the walls and trim, and finally $180.00 for lint trap dryer fixes (3 times over the tenancy). The Landlord asserts that the Tenants failed to clean out the dryer lint trap, causing a part of the dryer to short out (on three occasions).

The Tenants pointed out that the Landlord's wife lived in the suite before they did so it is not new as he asserts. The Tenants also deny that they caused any of the above noted damage, and pointed out that the Landlord has failed to provide any photos or evidence of the damage.

3) $2,800.00 – rental losses for April and May 2021

The Landlord stated that he was unable to re-rent the unit because the Tenants failed to move their vehicle out of the driveway until June 1, 2021, despite the fact that they moved out on March 14, 2021. The Landlord provided copies of text messages between himself and the Tenants showing the Tenants sent a text on April 1, 2021, apologizing for not picking up the car, and another on May 8, 2021, saying they would get the car soon, and finally another text on June 1, 2021, which is the day the Tenant's picked up the car.

The Tenants stated that the Landlord told them verbally that they could keep their car there for a little while until they had a chance to move it. The Landlord denies this. The Tenants also point out that there is no evidence that having an extra car in the driveway would have prevented them from being able to re-rent the unit.

As part of the hearing on August 17, 2022, the arbitrator found that the Landlord was served with the Tenant's forwarding address as of that date, and he found that the Landlord had until September 1, 2022, to return the deposits or file his application them.

If the Landlord failed to take action and file a claim by September 1, 2022, then the Tenants could be entitled to double the deposits.

As per the dispute management system, the Landlord filed his application against the deposits and paid his fee on September 1, 2022.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my 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 (move in inspection, photos and invoices) and the testimony provided at the hearing, I find as follows:

Security deposit

Under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Residential Tenancy Regulation (the “Regulations”). Further, section 38 of the Act sets out specific requirements for dealing with a security deposit at the end of a tenancy.

However, I also note that extinguishment only pertains to claims against the security and pet deposit for damage, and in this case, the Landlord also filed an application against the deposit for unpaid rent. As such, I find the Landlord was not extinguished from filing against the deposit. As per the previous arbitration, the Landlord had until September 1, 2022, to file an application against the deposits, or return the deposits,

otherwise the Landlord could be subject to a penalty of double these deposits. I note the Landlord filed the application and paid his fee on September 1, 2022. As such, I find he complied with the requirements set forth, and the Tenants are not entitled to double the security and pet deposit.

I note the Tenants have filed a separate application for double the security deposits. However, that application is not required any longer, as I have already made determinations on this matter. The Tenants may wish to withdraw or cancel that hearing, as it is no longer required.

The Landlord currently holds a security and pet deposit totalling $1,100.00, which will be addressed further below, after the merits of his claim are discussed.

The Landlord is seeking the following items:

1) $3,641.50 – Car damage

I have reviewed the testimony and evidence on this matter. However, I find the Landlord has failed to substantiate the value of his loss on this matter. There are no receipts or invoices, and I find the Landlord has failed to sufficiently demonstrate the value of his loss. As noted above, this is a requirement for a claim for damage or loss under the Act. I dismiss this part of the Landlord's application, in full.

2) $2,006.00 – Labour and parts for repairs to suite

I have reviewed the testimony and evidence on this matter. I turn to the condition inspection report provided into evidence by the Landlord. I note the Landlord failed to provide a copy that was signed by both parties, and the copy provided into evidence was only signed by the Landlord. I do not find the move-in condition inspection report is sufficiently reliable, as it has not been completed in accordance with the Regulations, and has not been signed by both parties. There is no clear explanation as to why it was not signed or why the signed copy was not provided into evidence. I afford the condition inspection report no weight.

I note there are no photos or other evidence showing the condition of the rental unit at the start or the end of the tenancy, and I find the Landlord has failed to sufficiently demonstrate that the above noted damage occurred during the tenancy, and that it was

a result of the Tenants actions or neglect. I note the Tenants deny all of these items. I dismiss this part of the Landlord's claim, in full.

3) $2,800.00 – rental losses for April and May 2021

I have reviewed the testimony and evidence on this matter. I note the Landlord asserts that he did not give the Tenants permission, verbally or in writing, for them to keep their car in his driveway. The Landlord suggested that he made it clear to the Tenants that he wanted their vehicle gone, and for them to come back and do the move-out inspection. However, after reviewing the text messages, I note the Tenants reached out a couple of times regarding the vehicle, on April 1, 2021, and May 1, 2021, yet it does not appear the Landlord responded or made it sufficiently clear that the car needed to be moved. I find the Landlord's lack of evidence showing he responded directly to this, taking issue with the car still being there, is problematic. It would seem logical that the Landlord would reply to the Tenants' text messages on April 1, and May 8, 2021, saying that he was taking issue with the car being parked and that it was impeding his ability to re-rent the suite. There is no evidence the Landlord articulated this matter in a sufficiently clear way.

In any event, I am not satisfied that having a car parked in the driveway would cause the Landlord to be unable to re-rent the unit for two months. Also, it is unclear what else the Landlord did to mitigate this loss, whether this be trying to communicate his issue with the car being left with the Tenants, or whether it be him trying to post an ad and re-rent the unit. Ultimately, I am not satisfied that the Landlord sufficiently mitigated his loss on this matter, and his claim is therefor dismissed.

Since the Landlord was largely unsuccessful, I decline to award the cost of the filing fee.

I order the Landlord return the deposits, in full, plus the following interest, payable in accordance with the Act and the Regulations. Interest is payable for 2023 only, at a rate of 1.95%, which means the interest accrued in $10.99. I order the Landlord to return $1,110.99, forthwith.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **$1,110.99**. This order must be served on the Landlords. If the Landlords fail to comply

with this order the Tenants 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: July 19, 2023

Residential Tenancy Branch