



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the Landlord's notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties confirmed that a tenancy existed that lasted for 12 years, but neither party has submitted a copy of the signed tenancy agreement.

The Landlord states that the Tenant moved out of the rental unit on January 19, 2013. The Tenant disputes this stating that he vacated the rental unit on January 16, 2013. Both parties agreed that a condition inspection was done on February 25, 2013 which the Tenant refused to sign the report because he did not agree with the written notations of the condition of the rental.

The Landlord seeks a monetary order for \$4,864.38. This consists of \$3,931.38 for the cost of replacing the hallway carpet, \$60.00 for repairs of holes in walls, \$80.00 for the cleaning of a stove in the basement, \$50.00 for moving the stove back into the rental unit, \$50.00 for cleaning a parking space from an oil spill, \$75.00 for the replacement cost of a common area key not returned and \$618.00 for the loss of rental income for March 2013. The Landlord relies on the incomplete condition inspection report, estimate for carpet replacement and photographs. The Tenant disputes these claims.

The Landlord claims that the Tenant causing a 75 foot burn on the carpet down the center of the hallway from the Tenant's rental unit. The Landlord states that it was not witnessed, but that the Tenant had a heavy table with four castors and that one of the castors was locked in place that could have caused the damage. The Tenant disputes that he caused the damage. The Landlord relies on a verbal admission by the Tenant, W.P. who told them that he was responsible for the friction burn. The Landlord has submitted a copy of a letter from "MasterCraft Flooring" which states that this is not repairable. The Landlord has also submitted a copy of a "proposal" dated January 18, 2013 for \$3,510.16 plus tax from the contractor for the cost of the carpet replacement. The Tenant, W.P. stated that he did not give any type of verbal admission and clarified that in the conversation with the Landlord that he told the Landlord that the damage, "could have been" caused by castors on a small table of his that was moved, but was unsure. The Landlord claims that the Tenant filed an insurance claim to pay for the damage with his broker. The Tenant disputes this stating that no insurance claim was filed, but that he was merely seeking information if he needed to make an insurance claim. The Landlord stated that they have also filed an insurance claim, but would not proceed with it if the Tenant was found to be at fault and paid the carpet costs. The Tenant noted in direct testimony that the pictures of the "friction burn" appear to be quite wide and could not have been caused by the castors from his table.

The Landlord claims that the Tenant left holes in the walls and ceiling that required patching and painting and is seeking \$60.00 for 3 hours of labour at \$20.00 per hour. The Tenant disputes that there were any holes left. The Landlord clarified that there were various nail holes in the walls and a hole in the ceiling that the Tenant made a poor job of plastering over requiring the Landlord to remove and re-plaster. The Tenant disputes this claim.

The Landlord claims that the Tenant removed the stove in the rental unit without permission and stored it in the basement. The Landlord seeks \$50.00 for the cost of moving the stove back into the rental unit and hooking it up and \$80.00 for cleaning the stove as it was left dirty. The Tenant confirms that he did move the stove and place it in the basement, but that it was done with the verbal consent of the Landlord. The Tenant

has confirmed that he did not return it to the rental unit upon vacating the rental unit. The Tenant stated in his direct testimony that the stove did require cleaning.

The Landlord seeks \$50.00 for cleaning the Tenant's parking space of an oil stain. The Landlord claims that the oil stains are quite large. The Tenant disputes the Landlord's claim, but admits that there were small 1 inch diameter oil stain spots left.

The Landlord seeks recovery of \$75.00 because the Tenant failed to return 1 common area door key after vacating the rental unit. The Landlord states that the Tenant was issued 2 such keys and failed to return 1. The Tenant disputes this stating that he was only ever issued 1 key and that it was returned.

The Landlord seeks to recover \$618.00 for the loss of rent for March 2013 stating that the Tenant failed to provide proper 1 month notice to end the tenancy. The Landlord states that a Notice to Vacate dated January 15, 2013 was received on February 5, 2013 for the Tenant to vacate on February 27, 2013. Both parties confirmed that the Tenant provided verbal notice, but that the Landlord required the notice to be in writing and provided the form to the Tenant. The notice also states that a condition inspection report for the move-out was scheduled for February 25, 2013 at 10:00 am. The Landlord states that she did not advertise the unit for rent, but instead waited until after the Tenant had vacated and called several people on her waiting list to re-rent the unit. The Landlord states that the unit was not re-rented until May 1, 2013.

Analysis

I accept the testimony of both parties and find that the Tenant vacated the rental unit on January 16, 2013 because the Landlord stated that they did not notice the friction burn in the hallway carpet until the monday (or a couple of days later) after the Tenant had vacated. The Landlord had provided a copy of a "proposal" from "MasterCraft Flooring Ltd." which is dated January 18, 2013 that I find to be an estimate and not an actual invoice/receipt for paid work for attending to inspect the carpet. The Tenant could not have vacated the rental later as the estimate was done on January 18, 2013.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has failed to provide sufficient evidence to satisfy me that the Tenant was responsible for the damaged carpet. The Landlord has also failed to provide sufficient evidence that the Tenant was responsible for the carpet damage as it was found two days after the Tenant had moved. The Landlord has failed to provide an actual invoice/receipt for paid work to show an actual cost incurred for any of the claims made. This portion of the Landlord's claim is dismissed.

I find that the Landlord has failed to establish a claim for the remaining portions of their claims. The Landlord has not provided any invoices/receipts for any of the work performed or sufficient details of such. The Landlord relies solely on the incomplete condition inspection report which is disputed by the Tenant because it did not accurately reflect the condition of the unit. The Landlord has not provided sufficient evidence to support their claims. The Landlord failed to provide sufficient evidence to satisfy me that there was any significant oil stains requiring cleaning. The Landlord was unable to provide any supporting evidence that 2 keys and not 1 key was issued to the Tenant. The Landlord failed to mitigate any possible losses by attempting to re-rent the unit for almost 1 month after receiving the Tenant's notice to vacate. However, the Tenant did admit in his direct testimony that the stove was not returned to the unit and failed to clean it. The Tenant also did not dispute that he failed to provide proper 1 month notice to vacate the rental unit as stated by the notice. Although the Landlord has substantially failed to establish a monetary claim, I find based upon the Tenant's direct testimony that the Landlord is entitled to a nominal award of \$60.00 for cleaning the stove and moving it back into the rental unit. I decline to award the recovery of the \$50.00 filing fee to the Landlord.

The Landlord may retain \$60.00 from the \$300.00 security deposit currently held by the Landlord. The Tenant is granted a monetary order for \$240.00 for the balance remaining.

Conclusion

The Landlord's Application is dismissed.

The Tenant is granted a monetary order for \$240.00.

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: June 07, 2013

Residential Tenancy Branch

