



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for loss of rent, for compensation under the Act and the tenancy agreement, for damage to and cleaning of the rental unit, for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began April 15, 2011, with the parties entering into a written tenancy agreement. The initial term of the agreement was one year, and then it continued on a month-to-month basis. The initial rent was \$948.00 per month, payable on the first day of the month. The tenancy agreement allowed the Landlord to charge the Tenants an additional amount if they had another occupant move into the rental unit. There were also terms to increase the hydro bill portion payable by the Tenants if they had an additional occupant move in. The Tenants paid a security deposit of \$474.00 in April of 2011. The rent was increased to \$1,148.00 when an additional occupant moved into the rental unit. Later in the tenancy the Tenants acquired a pet dog and the Landlord requested \$574.00 for a pet damage deposit, which was paid by the Tenants, based on ½ of the higher rate of rent.

There is a dispute between the parties about the Notice to End Tenancy given to the Landlord by the Tenants.

The Tenant testified they moved out on July 10, 2013. There was an incoming condition inspection report performed on April 15, 2011, and the outgoing condition inspection report was performed on July 26, 2013.

The Landlord's Claims

The Landlord claims the Tenants failed to give the Notice to End Tenancy at the correct time. The Landlord testified he was orally informed by the Tenants they were moving out soon, but they could not tell him the exact date. The Landlord testified he informed the Tenants that their Notice to End Tenancy would have to be received no later than the last day in the month before the month they wanted to end the tenancy. He testified that the Tenants gave him an undated and unsigned Notice to End Tenancy on July 1, 2013 to end the tenancy on July 31, 2013. He testified he had the Tenants date and sign this Notice to End Tenancy. In evidence the Landlord has provided a copy of the Notice to End Tenancy given by the Tenants to the Landlord on July 1, 2013. The Landlord claims **\$1,148.00** for loss of rent for one month due to the late Notice to End Tenancy of the Tenants. In addition to this the Landlord claims a late payment fee of **\$25.00**.

The Landlord claims **\$122.99** for an unpaid hydro bill. In evidence he has provided a copy of the bill.

The Landlord claims **\$40.00** for cleaning the venetian blinds in the rental unit. He submits he cleaned 9 sets of blinds himself and this took him approximately 2 ½ hours.

The Landlord also claims for cleaning the stove, front entrance windows, window frame (mold and mildew), exhaust hood above the stove, behind the laundry machines, the shower stall, the fireplace and fireplace insert, and at both entrances. The Landlord claims **\$150.00** for this cleaning. The Landlord estimates this took 20 hours or so over a period of a few days.

The Landlord claims that the pet dog damaged the yard and lawn by digging, there were urine stains and feces not picked up in the yard, urine smell in the suite as the dog was a puppy when it first came into the rental unit and was not house trained, and that the dog damaged two sets of blinds. The Landlord claims **\$65.00** for cleaning the yard, **\$100.00** for scrubbing floors and subfloors in the rental unit to remove the urine odour and **\$62.68** for replacing the blinds. A receipt for the blinds is provided in evidence.

The Landlord claims for items he had to repair or replace due to the Tenants. He claims **\$38.06** to replace two shielded light covers, **\$24.17** for a sprinkler head, and **\$43.31** for a smoke detector. The Landlord claims he had to repair a stain on the counter and claims **\$20.00** for this, and **\$50.00** to repair a chemical burn/melting to the finish of the floor. Receipts are provided for these items in evidence.

The Landlord also claims **\$78.39** to replace a satellite TV remote control that cannot be repaired, as he claims the Tenants lost the battery cover for this device. A receipt for this is in evidence.

The Landlord claims **\$352.34** for a furniture wardrobe which he claims the Tenants disassembled and moved into another room as it was too large to move assembled. The Landlord claims the Tenants damaged this wardrobe when they moved it. A receipt has been provided in evidence. The condition inspection report indicates the shelf tabs are missing.

The Landlord claims for damage to the walls and baseboards and painting. He claims **\$13.66** to repair some drywall, **\$55.06** for paint and tape, and **\$51.61** for caulking and paint.

The total claims of the Landlord against the Tenants are \$2,440.22.

The Tenants' Reply to the Landlord's Claims

The Tenants agree the blinds were damaged in the rental unit and agree to pay **\$62.68** for this. The Tenants agree to pay **\$122.99** for the unpaid hydro bill. The Tenants agree they disconnected and accidentally removed the smoke detector and will pay the amount of **\$43.31**. The Tenants also agree to the floor damage of **\$50.00**, due to nail polish harming the floor.

The Tenants claim they gave the Landlord the Notice to End Tenancy on the last day of June 2013, but they forgot to sign this Notice. The Tenant explained they had told the Landlord they were moving weeks prior to them giving the Notice to End Tenancy. The Tenant testified they returned the signed Notice to End Tenancy back to the Landlord early on July 1, 2013. The Landlord testified he was the person who dated the Notice.

As for cleaning the rental unit, the Tenants submit that they hired a cleaning company to come in and clean the rental unit, and they came in twice for cleaning. The Tenants did not submit a copy of an invoice, although the Tenant testified they paid approximately \$300.00 for this cleaning. The Tenant testified that the cleaning was done two weeks before the outgoing condition inspection report and the rental unit may have got dusty in the interval.

The Tenant denied their dog caused damage to the yard or that they did not pick up after their dog. The Tenants submit that the Landlord had his own pet dog in the same area as theirs was and they are not sure which dog was not picked up after.

The Tenants claim that the light covers were never installed right and they were held into the ceiling with nails and were prone to falling out of the ceiling.

The Tenants deny damaging the sprinkler head.

The Tenants deny damaging the satellite TV remote control.

The Tenants submit they were never told they could not move the wardrobe and that the small amount of damage to one of the shelves did not require the entire unit to be replaced.

The Tenants submit they did not notice any damage that required repairs or painting in the rental unit.

The Tenants submit that towards the end of the tenancy they had to ask the Landlord to leave the rental unit as he was making repairs before the Tenants had even moved out or they had done the outgoing condition inspection report. The Tenants claim they did not have an opportunity to clean the rental unit completely before the Landlord performed the outgoing condition inspection report. The Tenants submit they were not given the opportunity to sign or write out their disagreement with the Landlord during the outgoing condition inspection report.

The Landlord denied he intentionally prevented the Tenants from signing the outgoing condition inspection report.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 Tenants. 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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Based on the agreement of the Tenants, I award the Landlord **\$62.68** for blinds, **\$122.99** for the unpaid hydro bill, **\$43.31** for the smoke detector, and **\$50.00** for damage to the floor.

Based on the evidence and testimony, I find the Tenants did not give the required Notice to End Tenancy to the Landlord. If the Tenants wished to end the tenancy on July 31, 2013, they were required to give the Landlord the Notice to End Tenancy no later than June 30, 2013. The Notice to End Tenancy must also be signed and dated in order to be effective, pursuant to section 52 of the Act. Therefore I allow the Landlord **\$1,148.00** in rent for August. I do not award the late fee of \$25.00 as this amount is based on an award for loss of rent, not a late payment of rent.

I dismiss all the other claims of the Landlord due to insufficient evidence. Under section 37 of the Act the Tenants were required to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear. The Tenants did not agree with the outgoing condition inspection report of the Landlord and they have provided an equally probable version of events for each of the Landlord's claims. For example, while the Landlord claims the rental unit was not properly cleaned, the Tenant testified they hired someone to clean the rental unit. The Landlord would have had to provide evidence that would indicate the rental unit was not cleaned to a reasonable standard, regardless of who cleaned the rental unit, and most often this is done through photographic evidence, to provide the Arbitrator with sufficient evidence to determine if it was cleaned or not cleaned to a reasonable standard. There was simply insufficient evidence here to make a determination on the cleanliness of the rental unit, or on the other damages claimed by the Landlord.

Therefore, I find the Landlord has failed to prove that the Tenants did not leave the rental unit reasonably clean or that they damaged the rental unit beyond reasonable wear and tear, for the balance of his claims.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on the above, I find that the Landlord has established a total monetary claim of **\$1,476.98**, comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the Landlord retain the Deposits of **\$1,048.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$428.98**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord was partially successful in his claims, but had insufficient evidence to prove all of his claims.

The Landlord is awarded \$1,476.98 in monetary compensation, may keep the Deposits in partial satisfaction of the awards made, and is granted a monetary order for the balance due of \$428.98.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 04, 2013

Residential Tenancy Branch

