



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

The tenant confirmed that they had received the landlord's documentary evidence. The tenant stated that they personally served the landlord with their evidence, however, the landlord refused to accept it. The landlord agreed that he did not accept the tenants' documentary evidence as they felt it was not relevant.

In this case the landlord acknowledged that he refused to accept the tenants' evidence when he was personally served as he felt their evidence was not relevant. However, the landlord does not have the right to refuse the tenants evidence on the basis that he felt the evidence is not relevant; only an Arbitrator can make that determination at the hearing. As a result, this hearing proceeded and the documentary evidence submitted by both parties will be considered if found relevant during the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on August 30, 2008. Current rent in the amount of \$725.00 was payable on the first of each month. A security deposit of \$360.00 was paid by the tenants. The tenancy ended on September 29, 2013.

The parties participated in a move-in and move-out condition inspection. Filed in evidence is a copy of the condition inspection report.

The landlord testified that the tenants breached the Act, when they failed to provide sufficient notice to end the tenancy and seeks to recover October 2013, rent in the amount of \$725.00.

The landlord testified that on October 3, 2013, new tenants moved-in to the rental unit and he collected rent in the amount of \$725.00.

The landlord testified that the tenants damaged a door in the rental unit and that the tenants agreed to pay for the cost of the door in the move-out inspection. The landlord stated that the door has not been repaired, however, he went to the local hardware store and the replacement cost is \$109.00 plus installation.

The landlord testified that the tenants did not steam clean the carpets at the end of the tenancy and it cost him \$60.00 to have the carpets cleaned.

The tenants testified that they did not agree that the damage to the door was caused by them and believe it was there at the start of the tenancy, however not noted on the move-in condition inspection report. The tenants stated that they agreed that they would pay to have it repaired simply to avoid further conflict with the landlord. The tenant stated that the door is merely dented and not broken as alleged by the landlord. Filed in evidence is a photograph of a door, which appears to be dented.

The tenants testified that they do not believe the landlord has incurred any loss or expense and that they do not believe that the landlord has any intent of replacing or repairing the door. The tenants stated that the move-in condition inspection report shows other doors that were broken when they moved into the rental unit and those doors were never fixed during their tenancy by the landlord.

The tenants testified they did not clean the carpets at the end of the tenancy.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 45 of the Residential Tenancy Act states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
 (a) *is not earlier than one month after the date the landlord receives the notice, and*
 (b) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, the evidence of the landlord was the tenants did not give notice until September 2, 2013, to end the tenancy on September 30, 2013. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was October 31, 2013.

Under the Act, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

In this case, the evidence of the landlord was that he had new tenant move-in to the rental unit on October 3, 2013, and he collected rent for October the amount of \$725.00. As a result, I find the landlord has failed to prove that they incurred any loss of rent for October 2013, as a result of the tenants breaching the Act. Therefore, the landlord's claim for loss of rent is dismissed.

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the move-out condition inspection report indicated that the tenants denied damaging the door, however, they did agree that they would pay for the damage. The evidence of the tenants was that they do not believe the landlord has suffered any loss as they believe the landlord has no intent of making the repair.

The evidence of the landlord was that they have not made the repair or have had the door replace. The evidence of the landlord was that it will cost \$109.00 plus installation. The landlord has provided no receipt or estimate for the door to support their claim for compensation as a result I find the landlord has failed to prove a loss exists. Therefore, the landlord's claim for damage to the door is dismissed.

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenants are expected to clean the carpets if vacating after a tenancy of one year.

The evidence of the tenants was that did not clean the carpets at the end of the tenancy which exceed one year. I find the tenant has breached section 37 of the Act, when they failed to clean the carpets. While the landlord has not provided a receipt for carpet cleaning or purchase of supplies for carpet cleaning. I find the amount of \$60.00 to be reasonable. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$60.00**.

I find that the landlord has established a total monetary claim of **\$110.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of **\$110.00** from the security deposit in full satisfaction of the claim and I grant the tenants an order under section 67 for the balance due of their security deposit in the amount of **\$250.00**.

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

Conclusion

The landlord is authorized to deduct the above amount from the tenants' security deposit in full satisfaction of the claim. The tenants are granted a monetary for the balance due of their security deposit should the landlord fail to comply with my order.

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: November 08, 2013

Residential Tenancy Branch

