



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMV HOLDINGS CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FFL

Introduction

On December 4, 2017, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act*, (“the Act”) for a monetary order for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 compensation for damage to the unit?
- Can the Landlord retain the security deposit in partial satisfaction of his claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on December 1, 2015 as a one year fixed term tenancy that continued thereafter on a month to month basis. The Tenants were to pay the Landlord monthly rent in the amount of \$1,400.00. The Tenants paid the Landlord a security deposit of \$700.00. The Tenants provided a copy of the tenancy agreement.

The parties testified that the Tenants moved out of the rental unit on November 24, 2017.

The Landlord is requesting compensation for the following items:

Loss of Rent	\$1,440.00
Cleaning	\$178.00
Blinds	\$182.74
Painting	\$480.00

Loss of Rent

The Landlord submitted that the rental unit was left in such an unclean state it was unable to be rented out for the month of December 2017. The Landlord testified that after the Tenant gave notice to end the tenancy they assessed the unit and observed mold in the bathroom and they asked the Tenant to clean it. They submitted that the Tenants refused to clean the mold and they stated it was not their responsibility. The Landlord referred to the tenancy agreement that contains a clause that the Tenant must maintain proper ventilation to minimize moisture and mold.

The Landlord also submitted that the tenancy agreement provides that the Tenants are required to clean the blinds.

The Landlord testified that they hired someone to come and clean the bathroom. The Landlord submitted that the cleaning took a couple of weeks and then the Landlord advertised the unit and found a Tenant for January 1, 2018. The Landlord testified that painting, cleaning of blinds, and other cleaning delayed the re-rental of the unit.

The Landlord testified that the rent for December 2017, based on the notice of rent increase they issued would have been \$1,440.00. The Landlord testified that they re-rented the unit for \$1500.00 per month.

In reply, the Tenants testified that they noticed that mildew was growing in the bathroom and they wiped it off; however, the wiping was removing paint. The Tenants submitted that they spoke to the property manager at that time and discussed the issue. The Tenants submitted that the bathroom had been painted with the incorrect type of paint and the property manager said he would have it repainted with an anti –mildew type of paint. The Tenants submitted that the bathroom does not have a window and they kept the exhaust fan on while using the bathroom.

The Tenants submitted that there have been five different building managers over the past few years. They submitted that they told a new manager about the moisture issues and the manager tested the exhaust fan. The Tenants submitted that a previous Tenant had problems with condensation and humidity.

The Tenant testified that he spoke to the current building manager and explained the previous conversations he had with the previous managers and that two of them had told him they would be looking into repainting the bathroom. The Tenants did not provide any documentation regarding the interactions with previous building managers. The Tenants provided photographs taken of the rental unit at the end of the tenancy including digital photographs of the bathroom ceiling showing mild or mildew.

In reply, the Landlord stated that he was not aware that the Tenants had previously reported the moisture and paint issues to previous building managers. The Landlord acknowledged that the names of the previous building managers provided by the Tenant sounded familiar.

The Landlord submitted that there are no mold issue problems in the building. The Landlord provided digital evidence of photographs of the rental unit including photographs of the bathroom ceiling showing mold or mildew.

The Landlord submitted that cleaning and repainting of the unit delayed the Landlords ability to re-rent the unit.

The Tenants submitted that the Landlord could have had the problem with the bathroom fixed prior to the Tenants moving out of the rental unit.

Cleaning

The Landlord submitted that the rental unit was left unclean. The Landlord testified that he hired a cleaner to clean the rental unit on December 28, 2018, at a cost of \$178.00. The Landlord submitted that the cleaning took six hours. The Landlord provided a copy of a receipt for \$178.00.

The Landlord testified that the oven; stove top, hood fan, window tracks, light fixtures and walls required cleaning.

In reply, the Tenants testified that they left the rental unit clean. They testified that they left the walls, oven and cupboards clean. The Tenants referred to the photographs they provided in support of their testimony that they left the rental unit clean.

Blinds

The Landlord is seeking to recover \$138.07 for the cost of cleaning blinds at the end of the tenancy.

The Landlord submitted that the Tenants had corresponded with a previous building manager and they requested blinds. The Landlord installed new blinds in the Livingroom. The Landlord pointed out that the tenancy agreement requires the Tenants to clean the blinds at the end of the tenancy. The Landlord provided a quote for the cost of cleaning the blinds. The Landlord provided photographs of the blinds.

In reply, the Tenants acknowledged that the living room blind was installed in July 2016. The Tenants acknowledged that they did not clean the blinds at the end of the tenancy. The Tenants submitted that the bedroom blinds were not professionally cleaned at the start of the tenancy.

Painting

The Landlord submitted that the walls of the rental unit had patched areas where holes had been filled. The Landlord is seeking \$480.00 for the cost of painting the rental unit. The Landlord testified that the rental unit was painted in early December. The Landlord provided a quote for the cost of sanding and painting. The Landlord did not know when the rental unit had been painted last. The Landlord referred to his photographs that he indicates shows holes and patches.

In reply, the Tenants submitted that there were no holes left in the walls but there were patches where the Tenant patched the nail holes in the walls. The Tenants testified that the rental unit had been recently painted prior to them moving into the unit.

Security Deposit

The Landlord is seeking to retain the security deposit of \$700.00 in partial satisfaction of his claims.

The Tenants submitted that the Landlord is holding the security deposit, and a key deposit and a garage remote deposit.

When asked for information, the Landlord and Tenant could not provide any explanation on why the condition inspection of the rental unit took place on May 30, 2016, six months after the tenancy began.

Analysis

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.

Section 14 of the Residential Tenancy Regulation provides that the Landlord and Tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the Tenant's possessions, unless the parties agree on a different time.

Section 36 (2) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The Residential Tenancy Policy Guideline # 16 Claims in Damages provides:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises provides:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

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

Security Deposit

I find that the Landlord extinguished the right to claim against the security deposit for damage when the Landlord failed to perform a condition inspection of the rental unit on December 1, 2015, when the rental unit was empty of the Tenants' possessions. I find that the condition inspection report completed six months after the Tenants moved into the unit is not reliable evidence as to the condition and state of repair of the rental unit at the start of the tenancy. The condition inspection report will not be considered in this hearing.

The Landlord must return the security deposit of \$700.00 to the Tenants. However; the Landlord retains right to make claims for damage to the rental unit.

An arbitrator has the authority to apply a security deposit to any monetary awards granted to a Landlord. The security deposit will be applied to any awards granted to the Landlord.

Cleaning

I accept the Tenants' testimony and evidence that they spent time cleaning the rental unit at the end of the tenancy; however, I find that the Landlord has the stronger evidence that the rental unit required additional cleaning. The Landlords photographs establish that the oven and stove top needed further cleaning. In addition I find that the window tracks were not cleaned and some walls required cleaning.

While I accept the Tenants submission that the bathroom paint was rubbing off or separating from the ceiling/ walls, I find that the Tenants still had a responsibility to continue cleaning up the mildew and or mold. The mold or mildew was spreading throughout the bathroom. The Landlord's evidence established that the mold/ mildew could be wiped off.

I find that six hours of cleaning at an amount of \$178.00 is a reasonable amount to claim for the cost of the additional cleaning that was required.

I award the Landlord the amount of \$178.00.

Blinds

The Tenants acknowledged that they did not clean the blinds at the end of the tenancy. I find that the tenancy agreement requires that new or professionally cleaned window covering are required to be professionally cleaned at the end of the tenancy.

Regardless of whether or not the blinds were new or had been professionally cleaned, I find that the blinds were required to be clean at the end of the tenancy.

I find that the blinds were not cleaned and the Tenants are responsible for the cleaning cost.

I award the Landlord the amount of \$138.07 for the cost of cleaning blinds.

Painting

A Landlord is responsible to repaint the interior of a rental unit at reasonable intervals. Residential Tenancy Policy Guideline # 40 provides that the useful life of interior paint is four years.

The Landlord was not sure when the unit had been painted last; however the Tenant testified it had been recently painted when they moved in. The duration of the tenancy was approximately two years.

I find that the Landlord provided sufficient evidence that the walls of the rental unit needed to be painted at the end of the tenancy. The Tenants acknowledged that they filled holes they put in the walls. Based on the duration of the tenancy, the useful life of

interior paint, and the Landlord's responsibility to repaint at reasonable intervals, I award the Landlord 50% of the amount claimed.

I award the Landlord the amount of \$240.00 for the painting costs.

Loss of Rent

I find that the Landlord did not take reasonable steps to mitigate the loss by completing the repairs in a timely manner.

The Landlord submitted that the painting took 12 hours and the cleaning took 6 hours. The Landlords receipt for cleaning indicates the cleaning was completed on December 28, 2018, which is more than a month after the Tenants move out of the rental unit. The painting occurred in early December, so the delay in cleaning the unit does not seem reasonable. I am also mindful that the Landlord assessed the unit after the Tenants gave notice and the Landlord had this additional time to make arrangements to deal with any need for repairs or painting.

The Landlords claim for a loss of rent for December 2017, is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 of the fee that the Landlord paid to make application for dispute resolution.

Awards

The Tenants are awarded \$700.00 for the security deposit.

The Landlord has established a monetary claim in the amount of \$656.07. I authorize the Landlord to retain the amount of \$656.07 from the \$700.00 security deposit.

The Landlord is ordered to return the balance of the security deposit in the amount of \$43.93 to the Tenants. The Landlord is also ordered to return to the Tenants any key deposit, or garage door deposit, that he is holding.

The Tenants are granted a monetary order against the Landlord in the amount of \$43.93.

Conclusion

The Landlord established a monetary claim against the Tenants for cleaning, painting, and the filing fee in the amount of \$656.07.

I authorize the Landlord to retain the amount of \$656.07 from the security deposit.

The Landlord is ordered to return the balance of the security deposit in the amount of \$43.93 to the Tenants.

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 27, 2018

Residential Tenancy Branch