



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNSD, FFL

Introduction

On September 10, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss; a monetary order for damage or repairs; and to keep the security deposit. On November 22, 2020 the Landlord amended the application to increase the claim for unpaid rent and to decrease the claim for damage.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during 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 a monetary order for damage or repair costs?
- Is the Landlord entitled to money owed or other compensation for damage or loss?
- Can the Landlord keep the security deposit towards their claims?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in July 2017. The tenancy was renewed as a one-year fixed term tenancy to continue until August 31, 2020. Rent

in the amount of \$1,896.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$925.00.

The Landlord purchased the rental unit in 2015. The rental property was built in 1974 and is a one-bedroom suite located in a multi-unit apartment building with 14 floors. The Landlord testified that the rental unit was renovated just prior to her purchasing it.

The Landlord is seeking compensation for a loss of rent, cleaning costs, and damage.

Loss of Rent

The Landlord testified that she is seeking to recover a loss of rent for September 2020 because the Tenant refused to let her show the rental unit to prospective tenants in August 2020. The Landlord provided a copy of a letter dated August 19, 2020 served in person to the Tenant stating that the Landlord would be entering the unit on August 21, 2020 to show the unit. The Landlord provided a copy of a police report indicating that police attended the unit with the Landlord on August 21, 2020 to show the unit to prospective tenants.

In addition, the Landlord testified that the rental unit was left in such an unclean state that the rental unit was not rentable for the months of October 2020 and November 2020. The Landlord testified that there was mold present and the unit had a foul smell.

The Landlord testified that the wood around the windowsill was water damaged and she noticed a black substance on the windows.

The Landlord is seeking compensation of \$5,688.00 for a loss of three months rent.

In reply, the Tenant testified that the rental unit was left perfectly clean and, in a state, to be rented for September 1, 2020. In response to entry into the unit the Tenant testified that he was concerned about the covid virus; however, he twice gave his consent to the Landlord to enter. He testified that he consented to entry for August 24, but the Landlord then changed the date to August 21 when he was not available, and he asked the Landlord not to come.

In response to the cleanliness of the unit, the Tenant testified that he is extremely light sensitive, so he covered the bedroom window by securing a covering over it using tape and a couple of small nails. The Tenant testified that he is not sure whether it was mold found around the window or something else. He testified that mold can be found in many old buildings. The Tenant provided photographs of the rental unit.

The Tenant pointed out that the condition inspection report completed at the end of the tenancy indicates the apartment was completely clean and that the Landlord amended her application 81 days later.

Professional Cleaning

The Landlord hired a professional mold abatement company to come clean up the discoloration on the windowsill area. The Landlord testified that the damage was caused by no air circulation due to the window being covered by a blanket. The Landlord testified that it took the company a couple of hours to clean the windowsill. The Landlord testified that she thought it was a serious issue and never considered cleaning it without using a mold company.

The Landlord provided a copy of an invoice from the cleaning company and photographs of the window area. The Landlord is seeking to recover \$472.50 for professional cleaning costs.

The Tenant testified that he put up the blanket to block the light from the window.

Other Cleaning Costs

The Landlord testified that at the end of the tenancy the Tenant acknowledged the presence of mold around the window and he refused to sign the condition inspection report. The Landlord testified that the rental unit was left unclean. The Landlord hired cleaners to clean the unit. The Landlord testified that the Tenant paid her \$100.00 for the cost to clean behind the fridge and stove. The Landlord is seeking \$350.00 which is \$35.00 per hour for 10 hours. The Landlord provided a copy of an invoice and photographs of the rental unit.

In reply, the Tenant pointed out that the condition inspection report at the end of the tenancy makes no mention of an unclean unit. The Tenant testified that the rental unit was left perfectly clean. The Tenant provided a document signed by the Landlord indicating the Landlord accepted \$100.00 from him for a cleaning fee. The Tenant provided photographs taken of the rental unit.

Blinds

The Landlord testified that the blind on the bedroom window was ruined by mold and needed to be replaced. The Landlord did not know the age of the blind. The Landlord wants to replace the blind and is seeking to recover the replacement cost.

The Tenant testified that he is not responsible for causing any damage to the blind. He testified that he did not notice that there was a problem with the window, and he is not sure that the black substance is actually mold.

Curtains

The Landlord testified that the curtains on the bedroom window are ruined by mold and need to be replaced. The Landlord did not know the age of the curtains. The Landlord replaced the curtains and is seeking to recover the \$100.74 replacement cost. The Landlord stated that the mold cleaning company said that the curtains are full of mold spores.

The Tenant testified that he is not responsible for causing any damage to the curtains.

Cabinet Repainting

The Landlord is seeking compensation for having to repaint the kitchen cabinets. The Landlord testified that a lower cabinet had an odor. The Landlord testified that she attempted to remove the odor but was not successful and needed to repaint all six of the kitchen cabinets. The Landlord testified that the cabinets had been painted approximately five years prior. The Landlord is seeking to recover the painting costs of \$630.00.

In reply, the Tenant provided testimony that the Landlord never made mention of this in the condition inspection report or in her original application.

Mold Remediation and Rebuild

The Landlord is seeking compensation for the cost of having the wall opened up to determine if mold is present behind the wall. The Landlord stated that condensation could have travelled into the wall. The Landlord is seeking \$4,042.50

In reply, the Tenant disagreed with the Landlord's claim. The Tenant testified that the Landlord did not prove that there is mold and did not prove the relationship between covering the window and the presence of mold.

Security Deposit

The tenancy ended on August 31, 2020 and the Landlord applied September 10, 2020 claiming against the \$925.00 security deposit.

Analysis

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

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; 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.

Residential Tenancy Branch Policy Guideline # 16 states the following with respect to types of damages that may be awarded to parties:

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.

Residential Tenancy Policy Guideline #1 Landlord & Tenant - Responsibility for Residential Premises is intended to help the parties to an application understand issues that are likely to be relevant and may also help parties know what information or evidence is likely to assist them in supporting their position. The policy guideline provides that 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. A tenant is not responsible for reasonable wear and tear to the rental unit or site.

Residential Tenancy Branch Policy Guideline #40 Useful Life of Building Elements is a general guide for determining the useful life of building elements for considering applications and determining damages. When applied to damage(s) caused by a Tenant, or the Tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. The Guideline provides that the arbitrator may

consider the age of the item at the time of replacement and the useful life of the item when calculating the Tenant's responsibility for the cost or replacement.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Loss of Rent

Due to the covid 19 pandemic Landlords were restricted from accessing a rental unit from March 30, 2020 to June 23, 2020. Effective June 24, 2020 Landlords were again permitted to enter a rental unit for a reasonable purpose provided they gave tenants proper written notice of entry at least 24 hours in advance.

I find that beyond the date of June 23, 2020 the Tenant did not have a legal right to deny access to the Landlord if a proper notice of entry was issued. The Tenant testified that he agreed to allow the Landlord access on August 24, 2020; however, the Landlord changed the date. I find that the Tenant should not have denied entry to the Landlord on August 21, 2020; however, I find that the Landlord was able to enter the unit and show it to prospective tenants on August 21, 2020. I find that the Landlord has not established that the Tenants refusal to permit entry to the unit resulted in the Landlord being unable to rent the unit for September 2020.

With respect to the Landlord's claim that the rental unit was left so unclean that the Landlord was unable to rent it for the months of October 2020 and November 2020 I find that the Landlords claim fails. The condition inspection report indicates that the condition of the unit at the end of the tenancy was rated as good. While the Landlord has provided photographic evidence of the rental unit, I find that any cleaning needed could have been completed within one day.

In addition, the Landlord hired a company who cleaned the window area within two hours. The testimony and evidence provided by the Landlord does not establish that the rental unit could not be rented out for a three-month period of time.

The Landlords claim to be compensated for a loss of three months rent is dismissed without leave to reapply.

Professional Cleaning

I accept the testimony before me that the Tenant covered the window with a blanket which caused condensation to build up due to poor air circulation. I find that the Tenant is responsible for cleaning the mold or mildew from the window area.

The Landlord testified that wiping the windowsill and cleaning it would not deal with the issue; however, she then stated that she never considered cleaning it without using the mold clean up company. She testified that she is not aware if the mold/ mildew was tested to determine if it was harmful/toxic. The Landlord has a duty under section 7 of the Act to take steps to mitigate or minimize the loss or damage being claimed. Based on the Landlord's testimony, the claim of \$472.50 was for two hours of work.

While I find that the Tenant is responsible for the cleaning costs for the window frame, I find that the Landlord has not established that the cost of the emergency cleaning service was necessary due to a serious issue such as the presence of toxic mold. I find that the Landlord did not take steps to minimize the loss being claimed by determining if the cleaning could be performed at a lower cost. For these reasons, I find it is reasonable to compensate the Landlord at a lower amount than what is being claimed. I award the Landlord \$200.00 for the windowsill cleaning costs.

Other Cleaning Costs

I find that the Landlord's documentary evidence of a condition inspection report indicates that the rental unit was left in good condition at the end of the tenancy. In addition, the Landlord accepted \$100.00 from the Tenant for cleaning at the end of the tenancy. The Tenant's photographic evidence includes photos that show the rental unit was reasonably clean but does not show appliances or the bathroom. The Landlord's photographic evidence includes photographs showing unclean appliances / cupboards, and an unclean bathroom area.

I find that the Landlord has not provided sufficient evidence that the rental unit required 10 hours of cleaning at \$35.00 per hour. I find it is reasonable to compensate the Landlord at a lower amount than what is being claimed. In addition to the \$100.00 that the Landlord already received, I award the Landlord \$100.00 for four hours of additional cleaning costs.

Window Blind

The policy guideline on useful life of building elements provides that the useful life of blinds is 10 years. The Landlord did not know the age of the window blind. The

Landlord purchased the rental unit in 2015. It is reasonable to find that the blind was in place when the Landlord purchased the unit. I find that the blind is approximately 6 years old.

The Landlord testified that she has not purchased a blind and the window has no covering.

I find that the Tenant is responsible for the mold/ mildew present on the blind; however, the Landlord has not established the value of loss. The Landlord has not purchased a blind and provided a receipt after purchase. Since the Tenant is responsible for damage but the Landlord has not established the actual value of loss, I find it is reasonable to award the Landlord a nominal damages award of \$25.00.

Curtains

The Landlord did not provide any photographic evidence showing damage to a curtain. The Tenant stated he is not responsible for damage to the curtains. The Landlord purchased the rental unit in 2015 and did not know the age of the curtain. It is reasonable to find that the curtain was in place when the Landlord purchased the unit. I find that the curtain is approximately 6 years old.

The Landlord failed to provide sufficient proof that the curtains are damaged by mold/ mildew to an extent where they require replacement. The Landlords claim for the replacement cost of curtains is dismissed.

Cabinet Repainting

The policy guideline on useful life of building elements provides that the useful life of interior paint is 4 years. I find that the cabinets had been painted five years earlier and the paint was at the end of its useful life.

While the Tenant may be responsible for an odor within one lower cabinet, the Landlord is seeking to recover costs for repainting all six cabinets. The Landlord's claim is not reasonable. Since a Landlord is responsible to periodically repaint the interior of a rental unit and I find that the paint was beyond its useful life, the Landlord's claim for painting is dismissed in its entirety.

Mold Remediation and Rebuild

The Landlord's claim for mold remediation and rebuild costs is dismissed. The Landlord has not provided sufficient evidence to establish that the windowsill and/ or wall area needs to be opened and be rebuilt to deal with a health or safety issue. The Landlord did not have the mold tested and there is no evidence before me that it is toxic. I note that the window frame is very old as the property was built in 1974 and the useful life of wood window framing is 15 years.

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

The Landlord has established a monetary claim against the Tenant for cleaning costs and damages in the amount of \$325.00.

Security Deposit

The Landlord made a claim against the security deposit within 15 days from the end of tenancy in accordance with section 38 of the Act. I authorize the Landlord to retain the amount of \$425.00 from the security deposit of \$925.00. I order the Landlord to pay the balance remaining of \$500.00 to the Tenant.

I find that the Tenant is entitled to a monetary order in the amount of \$500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord established a monetary claim for cleaning costs and damages in the amount of \$425.00. I order that the Landlord can keep \$425.00 from the security deposit in full satisfaction of the Landlord's award. The Landlord is ordered to return the balance of \$500.00 to the Tenant.

I grant the Tenant a monetary order in the amount of \$500.00.

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: January 6, 2021