



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FFL

Introduction

On September 21, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for loss of rent; for damage and cleaning of the rental unit; and to retain the security deposit in partial satisfaction of the claim.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) attended the hearing; however, the Tenants did not. The Landlord testified that he served the Tenants with the Notice of Dispute Resolution Proceeding and his documentary evidence using registered mail sent to the Tenants’ new address. The Landlord testified that he confirmed the address by calling the Tenants’ new landlord and verified the address and verified that all three Tenants have moved into the address. The Landlord testified that the registered mail sent to the address was delivered by Canada Post on September 29, 2020. In addition, the Landlord testified that he sent the Notice of Dispute Resolution Proceeding to the Tenants using an email address they regularly used to communicate during the tenancy.

I also note that the Residential Tenancy Branch case management system indicates that the Tenant, Mr. K.K. responded to the Landlord’s claims by uploading 31 pages of evidence on January 4, 2021.

Based on the evidence before me, I find that the Tenants were served with the Notice of Dispute Resolution Proceeding in accordance with sections 89 and 90 of the Act and failed to attend the hearing to respond to the Landlord’s claims.

The hearing proceeded and the Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage?
- Is the Landlord entitled to money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began on April 15, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$3,688.47 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,797.50.

The Landlord testified that the Tenants moved out of the rental unit on September 13, 2020.

September 2020 Rent

The Landlord is seeking to recover \$1,834.18 in unpaid rent. The Landlord testified that the Tenants did not pay any rent owing under the tenancy agreement for the month of September 2020. The Landlord testified that the Tenants moved out of the rental unit on September 13, 2020. The Landlord was able to rent the unit out starting September 16, 2020 and he received rent for a portion of September rent from the new tenants. The Landlord is seeking a monetary order for a partial loss of September 2020 rent.

Cleaning Costs

The Landlord testified that the Tenants only did superficial cleaning of the rental unit at the end of the tenancy. The Landlord testified that there was marks on the walls, dirty baseboards, dirt of the floors, windowsills, cupboards and an unclean refrigerator.

The Landlord provided photographs of the rental unit showing the condition and state of repair of the unit at the end of the tenancy. The Landlord provided a copy of an invoice from a cleaning company dated September 14, 2020 in the amount of \$588.00 for the cost of cleaning the unit.

Garbage Removal

The Landlord testified that the Tenants left garbage and four old televisions on the property when they vacated. The Landlord testified that he took trips to the dump and to a recycling shop. The Landlord provided photographs of the garbage and televisions left on the property. The Landlord is seeking to recover \$150.00 for the cost to remove and dispose of the garbage.

Carpet Cleaning

The Landlord testified that the Tenants left the carpets unclean at the end of the tenancy. The Landlord testified that the carpets were black with dirt. He testified that the carpets were new at the start of the tenancy. The Landlord had five carpets cleaned including the stairs. The Landlord provided a copy of a receipt dated September 14, 2020 for payment of \$300.00 for carpet cleaning.

Linoleum Replacement

The Landlord testified that new linoleum was installed in the laundry room at the start of the tenancy. The Landlord testified that the linoleum was found to be torn due to the Tenants moving something across the floor which damaged the linoleum. The Landlord testified that the linoleum was replaced with the same quality of linoleum. The Landlord provided two photographs of the damaged linoleum. The Landlord provided a copy of an invoice from a flooring company dated September 16, 2020 for the cost of replacing vinyl flooring in a laundry room. The Landlord is seeking to recover the amount of \$892.50.

Security Deposit

The Landlord has applied to keep the security deposit of \$1,797.50 in partial satisfaction of his claims.

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.

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

September 2020 Rent

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent deals with situations where a Landlord seeks to hold a Tenant liable for loss of rent after the end of a tenancy agreement. The Guideline provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

I find that the earliest the tenancy could legally end was September 30, 2020. The Tenants are responsible to pay the rent until the end of September 2020. Since the Landlord was able to rent the unit out mid-September 2020 the Tenants are only responsible to pay the rent up to September 15, 2020.

I award the Landlord the amount of \$1,834.18 for unpaid September 2020 rent.

Move Out Cleaning

I accept the Landlord's testimony and evidence that the rental unit required additional cleaning at the end of the tenancy. I find that the Tenants are responsible for leaving the rental unit unclean.

I award the Landlord the amount of \$588.00 for cleaning costs.

Garbage Removal

I accept the Landlord's testimony and evidence that the Tenants left garbage and televisions on the rental property. I find that the Tenants are responsible for the cost to dispose of the garbage and items.

I award the Landlord the amount of \$150.00 for garbage removal and dumping costs.

Carpet Cleaning

I accept the Landlord's testimony and evidence that the carpets were left dirty. I find that the Tenants are responsible to pay the cost for having the carpets cleaned.

I award the Landlord the amount of \$300.00 for carpet cleaning costs.

Linoleum Replacement

I accept the Landlord's testimony and evidence that the Tenants are responsible for damage to the linoleum flooring. I accept that Landlord's testimony that the linoleum was new in April 2018. I find that the linoleum was 2.5 years old when the tenancy ended. Residential Tenancy Branch policy guideline #40 Useful Life of Building Elements provides that flooring has a useful life of 10 years. I find that the linoleum had a useful life of 10 years and had 7.5 years of life remaining at the end of the tenancy. I award the Landlord 75% of the replacement cost for the linoleum.

I award the Landlord the amount of \$669.37 for the replacement cost of the linoleum.

Security Deposit \$1,500.00

I order that the Landlord can keep the security deposit of \$1,797.50 in partial satisfaction of the Landlords awards.

Monetary Award

I find that the Landlord has established a total monetary claim of \$3,541.55 comprised of unpaid rent, cleaning costs, and damage.

After setting off the security deposit of \$1,797.50 towards the award of \$3,541.55, I find that the Landlord is entitled to a monetary order for the balance of \$1,744.05. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Landlord was successful in his claims for loss of rent, damage, cleaning costs, and recovery of the filing fee in the amount of \$3,541.55.

I order that the Landlord can keep the security deposit in the amount of \$1,797.50 in partial satisfaction of the Landlords awards.

The Landlord is granted a monetary order in the amount of \$1,744.05.

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 27, 2021

Residential Tenancy Branch