



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR, MND, MNDCL, MNSD, FFL

Introduction

On September 21, 2022, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent; a monetary order for damage to the unit; for money owed or compensation for damage or loss; to keep a security deposit and pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and two of the Tenants attended the teleconference hearing. The Landlord’s agent testified that the Notice of Dispute Resolution Proceeding was sent on October 6, 2022, to each tenant using registered mail.

The Landlord and Tenant were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant P.H. confirmed that he received a copy of the Landlord’s evidence. The Tenants stated that they did not serve a copy of their evidence to the Landlord. The Tenants were informed that it would not be fair for me to consider evidence that the Landlord is not aware of and did not have an opportunity to respond to. The Tenants evidence was excluded from 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 to recover unpaid rent?
- Is the Landlord entitled to a monetary order for damage?

- Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Landlord entitled to keep the security deposit and pet damage deposit?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on February 15, 2021, as a one-year tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$5,200.00 was to be paid to the Landlord by the fifteenth day of each month. The Tenants paid the Landlord a security deposit of \$2,600.00 and a pet damage deposit of \$2,600.00. The Landlord and Tenants testified that the Tenants moved out of the rental unit on September 15, 2022. The Landlord provided a copy of the tenancy agreement and addendum which lists the Tenants names.

The Landlord is seeking the following compensation:

- Unpaid rent \$12,200.00
- Cleaning Fee \$1,125.00
- Window repair \$496.65
- Closet door repair \$350.00
- Garage remote \$52.48

Unpaid Rent

The Tenancy agreement provides that the Tenants are required to pay the Landlord \$5,200.00 in rent each month. The Landlord testified that he received rent payments from four individual tenants. The Landlord stated that the Tenant A.N. failed to pay his portion of rent in the amount of \$950.00 for may months. The Landlord provided the following testimony regarding the unpaid rent:

- September 2021 rent in the amount of \$950.00 unpaid.
- October 2021 rent in the amount of \$950.00 unpaid.
- November 2021 rent in the amount of \$950.00 unpaid.
- January 2022 rent in the amount of \$950.00 unpaid.
- February 2022 rent in the amount of \$950.00 unpaid.
- March 2022 rent in the amount of \$950.00 unpaid.
- April 2022 rent in the amount of \$950.00 unpaid.
- May 2022 rent in the amount of \$2,050.00 owing.
- June 2022 rent in the amount of \$1,200.00 owing.
- July 2022 rent in the amount of \$1,000.00 owing.
- August 2022 rent in the amount of \$1,100.00 owing.

The Landlord stated that for May, June, July, and August he is not sure which Tenant failed to pay the rent; however, all the rent owing under the tenancy agreement was not paid.

In reply, the Tenant P.H. testified that he paid his rent of \$1,300.00 for himself and N.R. every month from the start of the tenancy until the end of tenancy. He testified that the Tenants had agreed that Mr. A.N. was to pay the Landlord \$950.00 each month for his room and portion of the rent. He testified that Mr. A.P. was to pay \$900.00 each month for his portion of rent. The Tenant testified that the Landlord texted him a few times during the tenancy stating that Mr. A.N. had not paid his rent, and he would speak to A.N. The Tenant stated that he cannot speak to whether or not A.N. or T. S. paid their portions of the rent.

Cleaning Fee

The rental unit is a five bedroom and five-bathroom house of approximately three thousand square feet. The Landlord testified that the Tenants left the rental unit unclean at the end of the tenancy. The Landlord hired a cleaning company to clean the rental unit after the tenants vacated. The Landlord paid the company \$1,125.00 to have the house cleaned. The Landlord stated that the flooring and carpet was dirty the house was dusty and there were flies in the kitchen.

The Landlord did not provide any photographs showing the condition and state of repair of the home at the end of the tenancy. The Landlord stated that we walked through the house for a move out inspection with Mr. P.H. and completed a Condition Inspection Report ("the CIR"). He stated that Mr. P.H. did not agree with the report.

The Tenant testified that they left the house in the same condition as when they moved into it. The Tenant stated they spent 30 – 40 hours cleaning the rental unit. The Tenant stated that he never received a copy of the CIR from the Landlord.

The Landlord confirmed that he did not provide a copy of the CIR to the Tenants at the end of the tenancy.

Window Repair

The Landlord testified that the Tenants informed him that a window was broken. The Landlord stated that they replaced the glass rather than installing a new window and frame. The Landlord did not provide an invoice for the cost of replacing the glass. The Landlord provided an advertisement from a hardware store for the cost to purchase a 48

x 40-inch framed window for the amount of \$473.00. The Landlord provided a photograph of a broken window. He stated that he does not know the actual amount paid for the glass replacement cost.

Closet Door Repair

The Landlord stated that a pocket door in a second-floor bedroom required repair. He stated that the door had fallen, and it cost \$200.00 to repair. He stated that the door was found laying on the floor at the end of the tenancy. The Landlord provided a photograph of a closet door laying on a floor.

In reply, the Tenant stated that he recalled seeing the door was loose and he referred to the move in CIR. He stated that the door was not anchored properly and that the Tenants were not negligent with their use of the door.

Garage Remote

The Landlord testified that he issued two garage door remotes at the start of the tenancy but only got one remote back. The Landlord replaced the missing remote. The Landlord does not have a receipt for the purchase cost of the replacement remote. The Landlord stated that he paid \$40.00 for the replacement remote.

In reply, the Tenant provided testimony confirming that they received two garage remotes. He stated that he returned the one he had but does not know what happened to the other one.

Money Owed or Compensation for Damage or Loss

The Landlord's agent testified that he has a contract with the owner of the residential property where he is paid \$1,000.00 if he must issue a notice to end tenancy and attend a dispute resolution hearing. He stated that the Landlord is claiming the amount of \$1,050.00 to recover the amount he has to pay his agent for the hearing.

The Landlords agent was informed that the contract between himself and the owner of the property is not a claim that is recoverable from the Tenants.

The Landlords claim for \$1,050.00 for the cost of having his agent deal with tenancy matters is dismissed without leave to reapply.

Security Deposit and Pet Damage Deposit

The tenancy ended on September 15, 2022, and the Landlord's application on September 21, 2022, included a claim against the \$2,600.00 security deposit and \$2,600.00 pet damage deposit. The Landlord applied to keep the deposits within 15 days of the tenancy ending.

Analysis

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

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.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Tenant ended the tenancy without giving the Landlord the proper written notice required under section 45(1) of the Act.

Unpaid Rent

On a balance of probabilities, I accept the Landlord's evidence that the Tenants failed to pay all the rent owing under the tenancy agreement. The Tenant acknowledged the Landlord's testimony that Mr. A.N. was paying \$950.00 towards the rent and that he had spoken to Mr. A.N. about not paying his share of the rent. The Tenants were each sent notice of this hearing and they all could have attended to respond to the Landlord's claims.

While I acknowledge the Tenant's testimony that he always paid his rent, the Tenants are all under the same tenancy agreement and are jointly and severally liable to pay the full rent to the Landlord each month.

I grant the Landlord a monetary order in the amount of \$12,200.00.

Cleaning Fee

I have reviewed the CIR provided by the Landlord. I find that there were many areas / rooms of the rental unit that are listed as fair, poor, scratched, damaged, good, broken at the start of the tenancy.

The Tenant testified that they left the rental unit in the same condition as at the start of the tenancy and that they cleaned the unit for 30-40 hours. The Tenant did not agree with Landlord with regard to the move out CIR and did not sign it. Since the Landlord did not provide photographs of the rental unit taken at the end of the tenancy, I find that

the Landlord has provided insufficient evidence that the Tenants are responsible for leaving the house unclean and for cleaning costs. The Landlord's claim for the cleaning cost is dismissed without leave to reapply.

Window Repair

The Landlord provided a photograph of a broken window but did not provide the actual cost incurred to repair it. The Landlord is claiming \$496.65 but he did not purchase the replacement window and frame; he only replaced the glass.

Since the Landlord has not provided the full particulars of the claim, I award him nominal damages of \$50.00.

Closet Door Repair

The Landlords photographic evidence of a door laying on the ground is that of a bifold closet door and not a pocket door. I accept the Tenants evidence that the bifold door was loose and not anchored properly. I find that it is more likely than not that the door fell off due to normal use and not negligence on the part of the Tenants.

The Landlords invoice for \$200.00 and his claim to recover \$200.00 to repair the door is dismissed without leave to reply.

Garage Remote

Upon review of the CIR and the testimony before me, I accept that the Landlord issued two garage door remotes to the Tenants at the start of the tenancy. I accept the Tenants testimony that he returned one of the remotes. On a balance of probabilities, I find that the Tenants failed to return one of the garage remotes to the Landlord.

The Landlord provided an advertisement showing a remote control for the cost of \$49.98. Since the Landlord did not provide an actual receipt for the purchase cost of a remote, I grant the Landlord a nominal amount of \$25.00.

Security Deposit and Pet Damage Deposit

Pursuant to section 36(2)(c) of the Act, I find that when the Landlord failed to provide the Tenants with a copy of the CIR after the move out inspection, he breached the Act and the tenancy regulation, and he extinguished his right to apply against the security deposit and pet damage deposit for damage. However, section 72 of the Act permits me to allow the Landlord to keep the deposits if I find that the Tenants must pay an amount to the Landlord.

The security deposit of \$2,600.00 and the pet damage deposit of \$2,600.00 plus interest of \$31.99 will apply to the any monetary amounts awarded to the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$12,375.00 comprised of \$12,200.00 for unpaid rent; \$50.00 for a window; \$25.00 for a remote, and the \$100.00 fee paid by the Landlord for this hearing. After setting off the deposits and interest of \$5,231.99 towards the award of \$12,375.00, I find that the Landlord is entitled to a monetary order for the balance of \$7,143.01. 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 Tenants failed to pay the Landlord all the rent owing under the tenancy agreement and are responsible for damage to a window and the replacement cost of a garage remote.

I find that the Landlord has established a total monetary claim of \$12,375.00. After setting off the deposits and interest of \$5,231.99 towards the award of \$12,375.00, I find that the Landlord is entitled to a monetary order for the balance of \$7,143.01.

I grant the Landlord a monetary order in the amount of \$7,143.01.

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: April 25, 2023

Residential Tenancy Branch