



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on July 18, 2011 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 12, 2011 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fee?

Background and Evidence

The tenancy began on October 1, 2009 and ended on June 30, 2011. Rent in the amount of \$1,000.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00. A move-in and move-out inspection was conducted between the Parties and the Landlord provided the reports and various photos as evidence. The Tenant did not agree with the move-out report as filled in by the Landlord. The Tenant also provided various photos of the state of the unit at both move-in and move-out.

The Landlord states that the Tenant failed to clean the unit at move-out and claims the amount of \$197.12. The Tenant states that the unit was thoroughly cleaned at move out. The Witness for the Tenant states that she attended the unit at move out and went through every room and saw that the unit was clean.

The Landlord states that the walls were damaged and left unclean and claims the amount of \$392.00 for the cost of painting the entire unit. The Landlord's photos show one wall with 2 marks, one wall with a drip mark and one wall where the paint bubbled. The Tenant states that none of the walls of the unit were marked by holes or otherwise and states that the marks shown in one of the Landlord's photo are not apparent on another photo taken by the Landlord showing the same wall. The Tenant states that she had wiped the walls down but that the walls were marked from drips coming from a kitchen unit above the Tenant's unit and were not caused by an act of negligence of the Tenant. The Tenant further states that she had reported the drips from the ceiling to the Landlord during the tenancy but that no action was taken by the Landlord.

The Landlord states that the floors were damaged and required repair. The Landlord states that the floor is approximately 40 years old and that the Landlord refinishes the floors at intervals. The Landlord could not say when the flooring of the unit was last refinished. The Landlord claims the amount of \$1,122.13 for the cost of replacing the flooring and baseboards. The Tenant provided photos of the floor at move-in. The move-in report notes that the flooring was stained at move-in. The Tenant's Witness,

the previous manager, stated that the floors in the unit were in bad shape when the Tenant moved in and that the previous tenant had been charged for damage to the same flooring. This Witness further states that the unit was due to be renovated for the next occupancy but that as the Tenant accepted the condition of the unit, these renovations were not done prior to her move-in.

The Landlord states that the counter tops were cut, gouged and marked at move-out and claims the amount of \$840.00 for the replacement of the counter tops. The Tenant provided photos of the countertops at move-out and states that the countertops were not cut or gouged but contained scratches and were stained from the previous tenant. The Tenant further states that the new countertops were installed by the Landlord as part of their movement to improve the property in order to obtain higher rents and not as a result of any damages by the Tenant.

The Tenant states that between the period June 2010 and September 2010, the Tenant was subjected to harassment by the Landlord after the Landlord was unsuccessful in their attempt to evict the Tenant without valid cause. The Tenant states that the eviction was attempted by the Landlord without any legal cause and that after losing their claim at a previous hearing, refused to change the tenancy agreement in May 2010 as ordered by the previous decision. The Tenant states that the amendment was not made until September 2010. Additionally, the Tenant states that shortly after the previous hearing, she was given a letter from the Landlord concerning the misuse of tokens by the Tenant. The Tenant states that this is an example of the harassment that the Tenant felt for this period of time. The Tenant states that the Landlords are obligated to ensure that tenants have peaceful enjoyment of their unit and that the conduct of the Landlord in relation to the Tenant was contrary to this obligation. As a result of the Landlord's actions, the Tenant states that she has suffered stress and anxiety, has lost income from missing work due to the illness caused by the actions of the Landlord and has lost peaceful enjoyment of the unit. The Tenant provided some medical evidence of her stress and resulting medications. The Tenant claims the amount of \$3,500.00 as compensation for her loss.

The Landlord states that they were carrying out their usual obligations and practices with the Tenant in relation to the tenancy when they undertook to evict the Tenant, when they followed up on the Tenant's conduct in relation to the use of tokens in the laundry room and when three managers were sent to the Tenant's unit to carry out the move-out inspection. The Landlord states that there may have been tension and that the Landlord could have been more sensitive but that no harassment or discrimination occurred.

Analysis

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. The Parties agree that the move-out report was disputed at the time of the inspection. Further, in a claim for damage or loss under the Act, regulation or tenancy agreement, the Party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

Given the photos and Witness evidence of the Tenant, I find that the Landlord has not substantiated on a balance of probabilities, that the Tenant caused the damages claimed by the Landlord to the floors and I therefore dismiss this claim of the Landlord. Considering the photo evidence of both Parties, I find that the damages to the counter tops are related to wear and tear and not to the extent that required replacement. I therefore dismiss this part of the Landlord's claim.

Given the Landlord's photos of the unit, and considering the evidence of the Tenant and the Witness that the unit was cleaned at move-out, I find that the Landlord has only shown sparse evidence of required touch ups and has not substantiated cleaning to the degree being claimed. As a result, I dismiss this part of the claim.

The photo of the wall containing a paint bubble does not appear to be related to any act of the Tenant but more likely as a result of a poorly done previous paint job. Further, after careful consideration of the conflicting photo evidence of the marks on the walls, I find that the Landlord's evidence in relation to wall damage is unreliable and cannot support any claim of damage to the walls. I therefore dismiss this part of the Landlord's claim. As the Landlord's application has not had any merit, I decline to award recovery of the filing fee to the Landlord.

Although the Tenant has claimed compensation in relation to the stress caused by the Landlord's acts following the previous hearing, I find that the Landlord's were not acting outside their obligations and responsibilities and I cannot find that the actions complained of by the Tenant amounted to harassment or discrimination. As a result, I dismiss this part of the Tenant's claim.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord filed the application within 15 days of the end of the tenancy, I find that the Tenant is not entitled to return of double the security deposit. Given that the Landlord is not entitled to retain any of the security deposit, I find that the Tenant is entitled to return of the security deposit plus interest in the amount of **\$525.00**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$575.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$575.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 13, 2011.

Residential Tenancy Branch