



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

1. A Monetary Order for unpaid rent - 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.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. 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 Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on June 2, 2010 with a fixed end date of August 31, 2011. A signed rental agreement for this period was a condition of the sale of the property by the Tenant/Seller to the Landlord/Purchaser. Other conditions for this agreement set out on the contract of purchase and sale addendum include monthly rent at \$1,600.00 and the payment of \$900.00 as a damage deposit. The Landlord still holds the security deposit. A written tenancy agreement was signed by the Parties, with the above terms. The Parties verbally agreed to extend the tenancy to September 4, 2011 however the Tenant did not move out until approximately midnight that night and does not dispute

the Landlord's claim for **\$100.00** for over holding the unit past noon on September 4, 2011. No move-in or move-out inspection was conducted.

The Landlord states that the Tenant agreed to clean the unit to a professional standard in the purchase and sale agreement but that Tenant left the unit and carpets unclean and claims the amount of \$180.00 for cleaning the unit and \$100.00 for carpet cleaning. The Landlord states that the cleaning was done by them and provided photos of the unit at move-out. The Tenant states that the unit was cleaned upon move-out and that the carpets had been steam cleaned in April 2011 when the unit had been placed on sale. The Tenant states that the carpet is 20 years old and that there were stains on the carpet when the Landlords purchased the unit.

The Landlord states that the fob returned by the Tenant did not work and claim the amount of \$50.00 for its replacement. The Tenant states that the fob was at least 10 years old and that it was working when it was returned to the building manager at move-out. The Tenant states that having lived at the unit for twenty years he knows that the fobs sometimes stop working and that he has no idea why it stopped working for the Landlords.

The Landlord states that the sheers were in the unit at the time of the start of the tenancy but that they were not there at the end of the tenancy and claim the amount of \$280.00 for their replacement. No receipt was provided by the Landlords and they state that these were standard sheers bought at Urban Barn. At the beginning of the tenancy the Landlords state that the sheers were in good condition.

The Landlords state that the shower rod was missing at the end of the tenancy and claim the amount of \$55.00 for its replacement. The Landlords did not provide a receipt for this cost but state that this was purchased at Home Depot. The Tenant states that the shower rod was a suspension rod that was old and rusted so he threw it out at the end of the tenancy. The Tenant further states that the shower rod was the type that costs about \$2.99 to replace.

The Landlord claims a loss in relation to parking costs contrary to the agreement for purchase and sale. The Landlord did not dispute that the tenancy agreement included the provision of parking during the tenancy.

The Landlord states that the Tenant failed to return all the keys to the unit and claim the cost of relocking the unit in the amount of \$100.00. The Tenant states that sets of keys were returned to the Landlord on two separate occasions.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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 and that costs for the damage or loss have been incurred or established.

As the Parties agree that the Tenant owes the Landlord for over holding the unit one day past the oral term of the tenancy agreement, I find that the Landlord is entitled to the claimed amount of **\$100.00** for the over holding. As the Landlord did not incur costs related to their alternate stay for the one day of over holding, I dismiss the landlord's claim for this loss.

Although the purchase and sale agreement requires cleaning of the unit to a professional standard, the standard for a tenancy agreement is reasonable cleanliness. Given the photos of the state of the unit at move-out and considering the Tenant's evidence that the unit was cleaned at move-out, I find that the Landlord has shown some cleaning was left but not to the extent claimed. I therefore find that the Landlords are entitled to a cost for reasonable cleaning in the amount of **\$100.00**. Accepting that the carpet was old and stained at purchase and at move-out and accepting that this

carpet was cleaned a few months prior to the move-out, I dismiss the Landlord's claim for steam cleaning the carpet.

Given the evidence of the Tenant that the fob was old and working at the time it was returned to the building manager, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant was responsible for the fob not working and I dismiss this part of the Landlord's claim.

Considering that the Tenant did not dispute the Landlord's claim in relation to the sheers, I find that the Landlords are entitled to the cost of replacing the sheers in the amount of **\$280.00**. Accepting the Tenant's evidence that the shower rod was a suspension type with minimal cost and noting that no receipt was provided by the Landlords for the replacement of this rod, I dismiss this part of the Landlord's claim.

As the claim of the Landlord in relation to a loss of parking is a term of the contract for purchase and sale and not a loss in relation to a breach of the Act, regulation or tenancy agreement, I dismiss this part of the Landlord's claim.

As the cost of changing locks between tenancies is not due to an act or negligence of the Tenant, I dismiss this part of the Landlord's claim. I also dismiss the Landlord's claim for dispute resolution service costs as these costs did not arise as a result of an act or the negligence of the Tenant or any breach of the Act, regulation or tenancy agreement.

As the Landlord's claim had merit, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$530.00**. As the Landlord still holds the security deposit of \$900.00, I order the Landlord to retain the amount of \$530.00 from the security deposit and return the remaining amount of **\$370.00** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of \$530.00 from the security deposit plus interest in the amount of \$900.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$370.00**. 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: November 01, 2011.

Residential Tenancy Branch