



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

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

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

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

Preliminary Matter

At the onset of the Hearing, it was noted that a previous decision, dated February 16, 2012, awarded the Landlord retention of the full amount of the security deposit in partial satisfaction of the monetary award made to the Landlord. As this matter has been dealt with, I find that the Tenant may no longer make a claim for the return of the security deposit and this claim is therefore dismissed.

The Landlord’s Agent requested their name removed from the application as they are not the Landlord. Noting that the tenancy agreement identifies the Landlord’s Agent as a Party, I decline to make this amendment.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy agreement was signed on July 21, 2011 to begin on September 1, 2011. Rent in the amount of \$5,900.00 was payable in advance on the first day of each month. The tenancy ended on October 8, 2011.

The Tenant's evidence is as follows: At the time of signing the lease the Tenant requested repairs to be completed prior to move-in and the Landlord agreed to those repairs. The Parties conducted a move-in inspection on August 22, 2011 and repairs were still pending. The Tenants' move-in was delayed to September 2, 2011 due to the incomplete repairs. Upon moving into the unit, the condition was "horrendous". The Parties met again on September 17, 2011 and the Landlord agreed to make repairs identified by the Tenant. On September 23, 2011 the contractor arrived to make repairs however several items were left unrepaired. In frustration, the Tenant withheld rent for October 2011 and had no choice but to move out of the unit.

The Tenant states that as a result of the unit not being in proper condition at move-in, the unit was inhabitable, a security issue and a safety concern. In frustration the Tenant withheld rent for October 2011 and states that as a result of the condition of the unit, the Tenants moved out of the unit. The Tenant claims reimbursement of monies spend by the Tenants for repairs and cleaning to the unit, for the cost of carpet replacement, moving costs and additional rent incurred at the next tenancy. The Tenant supplied invoices on Tenant's costs; email correspondence between the Parties dated after move-in in relation to damage discovered, repairs requested and repairs completed by the Tenant; and, an invoice of work done by the Landlord's contractor.

The Landlord points to section "ss" of the tenancy agreement that sets out as follows: "The tenant will receive the premise in the same condition as they viewed it unless the Landlord has agreed in writing to such improvements." The Landlord states that at the time of signing the tenancy agreement, the Landlord agreed to make repairs as listed on the agreement. The Landlord states that the owner was happy to fix items raised by the Tenant and spent a significant amount of money on such repairs but that nothing

seemed to please the Tenants. The Landlord states that in September 2011 the Tenant requested additional repairs and the Landlord was prepared to make those repairs but that the Tenant failed to pay rent for October and the Landlord subsequently served the Tenant with a 10 Day Notice to End Tenancy for unpaid rent.

The Landlord states that the repair items claimed for reimbursement are in relation to a carpet that the Tenant purchased on his own accord and the Landlord only agreed to pay for half the cost. The Landlord states that the Tenant is responsible for this bill. The Landlord states that the costs claimed for repair to an appliance occurred without the Landlord's knowledge and that the Tenant did not inform the Landlord about the necessity for this repair. The Landlord states that the unit was clean to the usual standard at move-in and disputes that any mold was present. The Landlord states that the photo of the toilet shows usual dirt found when a toilet seat is removed. The Landlord states that the claim for reimbursement for a second carpet was not anything the Landlord agreed to and that the carpet replaced by the Tenant had nothing wrong with it. The Landlord states that although there was an agreement by the Landlord to paint certain rooms and upgrade certain fixtures, that the Landlord only agreed to pay for the labour and installation not the supplies or fixtures. The Landlord states that if the Tenant was concerned over the movement of the repairs, then the Tenant had a venue to dispute this movement. The Landlord states that the Tenant elected instead to not pay rent and moved out of the unit due to the Tenant's own choice. The Landlord states that they have no idea how to rebut the claim for the increase in rent paid by the Tenant in the next tenancy and that the Tenant could be paying higher rent due to an upgrade in residence.

It is noted that both Parties expressed frustration over the length of time this dispute has taken to resolve and the limited time provided at the Hearing. The Parties were provided an opportunity to request an adjournment however, both Parties declined to make such a request.

Analysis

Section 32 of the Act provides as follows:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that
 - (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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. Considering the evidence that the Tenant failed to pay rent and noting the previous decision, I find that the Tenant does not have a claim for moving expenses or increase rental costs at the next tenancy as the Landlord was not responsible for this move. I therefore dismiss this part of the Tenant's claim.

Given the photo evidence of the Tenant, including photos of such items as the broken glass, garbage left behind and a broken door handle present at move-in and considering the amount of rent that indicates the age, character or location of the unit, I find that the unit was not in a reasonable state of cleanliness or repair and find that the Tenant has substantiated the claim for cleaning in the amount of **\$200.00** and a further reasonable compensation of **\$500.00**. Although the Landlord disputes the claim for the

appliance, I find that this appliance required repair and that the Landlord is responsible for such repair. I therefore find that the Tenant is entitled to reimbursement of **\$559.59**. Given the Landlord's denial that any agreement was made for reimbursing Tenant's costs in relation paint and carpet costs, and considering the lack of any written agreement for these items, I find that the Tenant has failed to substantiate an entitlement to these costs claimed and I therefore dismiss this part of the Tenant's claim. As the Tenant's application has merit, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,359.59** (\$200.00 + 500.00 + 559.59 + 100.00).

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,359.59**. 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: March 23, 2012.

Residential Tenancy Branch