



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 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.

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?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on September 1, 2011 and ended on May 31, 2012. Rent in the amount of \$2,575.00 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 \$1,287.50. The Parties conducted a move-in inspection on August 28, 2011 and a report was completed and signed by the Tenants.

The Landlord states that at move-out, only one Tenant showed up for the inspection and this Tenant left before the inspection was completed so the Landlord completed the inspection form and sent a copy of the report to the Tenant by mail on approximately

August 1, 2012. The Tenant states that the inspection was conducted and that the Tenant left after the inspection was concluded. The Tenant states that the forwarding address was provided to the Landlord at the end of the inspection. The Tenant states that during the inspection no damage was noted to anything other than the bathroom vanity and a missing light bulb and that at the end of the inspection the Landlord again said that the only problems were with the bathroom vanity and missing light bulb. The Landlord states that after the Tenant left and upon further inspection additional items were noted as damaged. The Tenant states that repeated requests were made to the Landlord to provide a copy of the inspection report immediately after the conclusion of the inspection.

The Landlord states that the Tenants left the unit unclean and damaged and claims as follows:

- \$442.00 for a damaged cabinet, includes cost of trips to assess and repair and costs to replace a broken shelf, door and mirror;
- \$560.00 for a damaged porcelain sink, includes labour and gas costs;
- \$12.00 for glue and screws;
- \$13.50 for replacement of one light bulb;
- \$140.00 to repair garbuerator;
- \$65.00 for a broken oak threshold;
- \$85.00 to polish granite counter;
- \$750.00 for depreciation to hardwood floor;
- \$500.00 for repair to hardwood floor;
- \$90.00 to replace chain for patio door;
- \$210.00 to repair walls;
- \$140.00 for cleaning of walls and other items in the unit.

The Landlord did not supply receipts or invoices for any of the above claims. The Landlord states that most of the work was completed by the Landlord and that most of the supplies were obtained through the Landlord's business.

The Tenant states that during the tenancy the bathroom vanity fell in the middle of the night for no reason and that because there was danger of the vanity falling further and breaking, the Tenant removed the mirrors. The Tenant states that a glass shelf in the

vanity broke while the Tenant was removing the mirrors. The Tenant states that the mirror was then cracked by the Landlord when he repaired the vanity. The Tenant states that when the vanity fell it caused the damage to the sink and granite counter. The Tenant states that the garbuerator was barely used during the tenancy and state that it just stopped working so the Tenants informed the Landlord. The Tenant states that the Landlord provided photos of everything but the contents of the garbuerator discovered upon repair and disputes that they caused the garbuerator to stop working and that hair was never placed in the garbuerator by the Tenants.

The Tenants state that the damage to the threshold was not noticed during the tenancy and that when the Landlord was notified of the damage that the Landlord said it was no problem. The Tenants states that the marks on the floors were not caused by the Tenants as they never wore heels on the floor and that the marks are not over reasonable wear and tear. The Tenant states that there was never a chain on the patio door and that this was not caught on the move-in inspection. The Tenant states further that the cost claimed by the Landlord is high.

The Tenant states that there were some scuff marks on the walls that were removed by the Tenants but that no gouges were noticed or mentioned during the move-out inspection. The Tenant states that the photos of the walls do not show the size of the gouges being claimed. The Tenant states that any scuff marks that may have been left could easily be removed by a magic eraser within less than an hour. The Tenant states that these scuff marks are also reasonable wear and tear

The Tenant states that the oven and unit was thoroughly cleaned at move-out by professional cleaners and the Tenants and that one baseboard shown in the photo shows only a bit of dust or dirt and was simply missed. The Tenant states that the oven was cleaned at move-out and that the photo provided by the Landlord is only of the baking tray that was not cleaned by the Tenants.

The Tenant states that the broken door lock on the bathroom was never noticed, that the Tenants never forced the door or lock at any time and that the door was never locked as the Tenants are siblings.

Analysis

Section 35 of the Act provides that at the end of a tenancy a landlord and tenant together must inspect the condition of the rental unit, that the landlord must complete a condition inspection report in accordance with the regulations, that both the landlord and tenant must sign the report and that the landlord must supply the tenant a copy of that report in accordance with the regulations. Section 18 of the Residential Tenancy Regulations (the "Regulations") requires that a copy of the inspection report be provided to the Tenant within 7 days after the condition report is completed. Section 36 of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Considering the Tenant's evidence that they conducted the move-out inspection with the Landlord and left after it was completed and based on the Landlord's evidence that following the departure of the Tenant more items were noted to be damaged, I find on a balance of probabilities that the Tenants conducted the inspection as required. Based on the evidence of the Landlord, I find that the Landlord did not provide a copy of the condition inspection report to the Tenant within 7 days as required by the Regulations. Accordingly, I find that the Landlord's right to claim against the security deposit is extinguished. As a result, I order the Landlord to return the security deposit plus zero interest in the amount of **\$1,287.50** to the Tenant forthwith.

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 neglect of the responding party and that costs for the damage or loss have been incurred or established. As the Landlord did not provide any evidence of receipts or invoices for the amounts claimed as costs, I find that the

Landlord has failed, on a balance of probabilities to substantiate that tithe costs claimed were incurred. I therefore dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,287.50**. 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: August 28, 2012.

Residential Tenancy Branch