



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, 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 damage to the unit – Section 67;
2. An Order to retain the security deposit - Section 38; and
3. 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 started on July 1, 2011 and ended on September 29, 2012. Rent of \$1,500.00 was payable on the first day of each month and at the onset of the tenancy, the Landlord collected \$750 as a security deposit and \$750.00 as a pet deposit. No move-in or move-out report and condition inspection was conducted. The Parties agree that the Tenant is responsible for damages to the handrail and posts in the amount of **\$55.00**.

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

- \$87.36 for repairs to a kitchen cupboard door and \$90.00 to replace the same door;
- \$50.00 for the cost of damage to a piece of counter trim. The Landlord states that this item has not been repaired;
- \$700.00 for the costs of damage to the hardwood floor. The Landlord states that this item has not been repaired;
- \$30.00 for costs to repair marks or gouges on the living room wall. Repairs were completed by the Landlord and costs are for the labour;
- \$150.00 for costs to paint and repair a garage door and surrounding weather stripping that was scratched by the Tenant's pet. The Landlord states that the previous tenant did not have a pet and that although the Landlord had a pet while living in the unit, there was no damage to the door done by this pet;
- \$450.00 for the replacement cost of a hot tub lid. The Landlord states that due to the windy weather, the Landlord had hot tub clips on the hot tub cover to keep the lid secure and that if the Tenants used the clip handles to remove the lid, this would cause the damage that is claimed. The Landlord states that the lid is 3.5 years old, that the maximum life of such a lid is 5 years old and that the Tenants caused the damage requiring its replacement;
- \$558.10 for costs to replace the septic pump. The Landlord states that during the tenancy, the Tenants informed the Landlord that the septic system was not working and that the system required pumping by a septic company. The Landlord states that at this time the Tenants were given instructions by the septic company on how to drain the tank and that at the end of the tenancy, this company advised the landlord that the damage to the system was caused by the failure of the Tenants to follow the drain instructions;
- \$150.00 for general cleaning to the unit. The Landlord states that while the unit had been cleaned at move-out, this was surface cleaning only and much more had to be completed by the Landlord before it was suitable for the next tenant. The Landlord states that per hair was all over and that the tenants did not wipe down parts of the walls that had finger and hand marks.

The Tenant states that the door was damaged by a defective lazy susan and that the first repairs claimed were poorly done causing the door to again come off as a result of the same lazy susan defect. The Landlord states that there was no problem with the lazy susan while the Landlords live in the unit. It is noted that the Landlord confirmed that a previous tenancy occurred prior to this tenancy and after the Landlord lived in the unit.

The Tenant states that the damage to the living room wall was pre-existing and was covered by the curtains at the beginning of the tenancy. The Tenant states that at the onset of the tenancy, many marks were on the walls and that the Tenant made repairs to those walls at the onset but that these marks were not seen at the time.

The Tenant states that the metal door was damaged at the outset of the tenancy and not caused by the Tenant's pet, a small dog. The Tenant states that the hot tub lid was damaged and had clips missing at move-in and that during the tenancy the wind caused the lid to pull off on numerous occasions.

The Tenant states that when they first had problems with the septic system, they called the Landlord who instructed them to call the septic company. The Tenant states that this company informed them that the problem was with the filters which required monthly cleaning. The Tenant states that this cleaning was done. The Tenant states that when the electrician (the Landlord's family member) came in to inspect the system, they were told that the wires for the pump had corroded due to faulty placement of the pump.

The Tenant states that the unit was fully cleaned at move-out with the exception of the room that contained the cat litter. The Tenant states however that the grime left on this floor was caused by a leak from the furnace and the Tenant simply forgot to scrape this from the floor.

Analysis

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, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed. Given the Parties agreement on damage to the handrailings, I find that the landlord has substantiated an entitlement to **\$55.00**.

Given the evidence of the Tenant that the door was damaged as a result of the lazy susan and noting that another tenancy occurred between the Landlord's use of the unit and the Tenant's use of the unit, I find that the Landlord has not substantiated that the Tenant caused the damage to the cupboard door and I dismiss this cost. Given the Landlord's evidence that repairs to the counter trim and wood floor were not made, I find that the Landlord has failed to substantiate that any costs have been incurred and I dismiss these claims. Given the Tenant's evidence that the damage to the living room wall was pre-existing, I find that the Landlord has failed to substantiate that the Tenant caused this damage and I therefore dismiss this claim.

Accepting that the previous tenants did not have a pet in the unit but noting that both the Landlord and Tenant had a pet during their respective use of the unit, and given the lack of a move-in report, I find that the Landlord has not substantiated on a balance of probabilities that the Tenant's pet caused the damage to the door and I dismiss this cost.

Given the evidence of both Parties that the wind causes the hot tub lid to come off, and given the Tenant's evidence that the lid was damaged and missing clips at move-in, I find that the Landlord has failed to substantiate on a balance of probabilities that the damage was caused by the Tenant. I therefore dismiss this claim.

Given the evidence of the Tenant in relation to the faulty original placement of the pump that the Landlord did not dispute, I find that the Landlord has failed to establish on a balance of probabilities that the Tenant was responsible for the failure of the pump. I therefore dismiss this claim.

Given the evidence of the Tenant that one room was left unclean, and noting that the Tenant did not dispute that marks were left on the walls, requiring the washing of those marks, I find that the Landlord has substantiated the costs of cleaning the unit to a reasonable state and I find the Landlord entitled to **\$150.00** as claimed. As the Landlord has been substantially unsuccessful with its claim, I decline to award recovery of the filing fee.

The total monetary entitlement of the Landlord is **\$205.00**. I order the Landlord to deduct this amount from the combined security deposit of \$1,500.00 plus zero interest and to return the remaining amount of **\$1,295.00** to the Tenant forthwith.

Conclusion

I order that the Landlord retain \$205.00 from the **deposit** and interest of \$1,500.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the balance due of **\$1,295.00**. 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 Act.

Dated: January 15, 2013
