



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Performance Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, 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 damages to the unit – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit - Section 38; and
5. 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.

Preliminary Matters

At the onset of the Hearing the Landlord withdrew its claim for unpaid rent.

During the Hearing, the Tenant stated that a letter from a previous tenant on the condition of the unit during that tenancy was received late by the Tenant and that the Tenant provided this letter as evidence to the Landlord and the Residential Tenancy Branch yesterday. The Landlord states that this letter was received and read but objected to this letter being accepted due to being late. The Landlord’s first named Agent stated that nothing was known by this Agent of the previous tenancies and the Landlord’s second named Agent, the property manager during the previous tenancies, responded to this letter by arguing that it should not be accepted due to its late receipt.

As this letter is relevant and pertinent to the dispute at hand, as the Landlord has had opportunity to review this letter and noting that the Landlord did not ask for an adjournment, I accept this evidence and had the Tenant read it at the hearing.

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 February 1, 2012 and ended on January 31, 2013. Rent of \$1,550.00 was payable monthly and at the outset of the tenancy, the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted a move-in inspection report on January 27, 2012 and a move-out inspection report on January 31, 2013.

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

- \$561.30 for cost to repair a light switch, nail holes on the living room wall and damaged drywall and baseboards in the lower room. The Tenant states that the light fixture simply fell apart during the tenancy. The Tenant states that the amount claimed for these damages are outrageous given that the wall had 4 to 6 small holes. The Landlord states that no other estimate for the cost of this work was obtained. It is noted that the costs for each of these damaged areas were not itemized on the invoice;
- \$515.20 for the cost of professional cleaners to clean the unit. The Landlord states that the tenancy agreement requires the Tenant to have the unit professionally cleaned at the end of the tenancy and the Landlord states that this was not done. The Tenant states that the unit was cleaned at move-out. It is noted that there is no unclean areas indicated on the move-out report. The Landlord provided some photos of the unit and a bill from the cleaners;

- \$1,400.00 for the cost of refinishing 200 sq ft of hardwood floor in the basement. The Landlord state that the floor is approximately four years old. The Landlord states that although another estimate on costs was sought, it was not able to be obtained in time as the flooring needed to be repaired for the next tenant. The Tenant states that the unit is empty and for sale. Landlord states that a tenant is in the unit and confirmed that the unit is for sale. The Tenant provided a letter from the previous tenant that indicates that the damage to the hard wood floor and other areas of the unit was present during that tenancy. The Landlord states that there was some pre-existing damage and that although other scratches and marks were noted at move-out in relation to the tenancy, no claims were being made in relation to these marks. The Landlord states that the Tenant told them he damaged the floor by setting his tools on the floor and note that the Tenant agreed to these damages during the tenancy as indicated by the Tenant's signature agreeing to such damage;
- \$106.40 for the cost of a remote that was not returned by the Tenant. The Tenant does not dispute this cost.

Analysis

Section 37 of the Act requires a tenant to leave a unit reasonably clean and undamaged except for reasonable wear and tear. Section 5 of the Act provides that a landlord or tenant may not avoid or contract out of the act and any attempt to do so is of no effect. 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 reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the tenancy agreement requires a professional cleaning by a tenant at the end of the tenancy and as the Act requires only reasonably cleaning, I find that the tenancy agreement attempts to place a higher obligation on the Tenant than what is required under the Act. As such, I

find that this part of the tenancy agreement is of no effect. The Tenant however is still required to meet the standard of reasonable cleanliness.

Section 21 of the Residential Tenancy 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. Considering that the move-out report does not indicate that any cleaning was required and considering that the Tenant stated that the unit was cleaned at move-out, I cannot find on a balance of probabilities that the unit required cleaning to the extent claimed. Upon further consideration of the photos provided, I consider that the Landlord has substantiated a nominal entitlement for cleaning costs in the amount of **\$100.00**.

Given the move-out report and acknowledgement of the Tenant that 4-6 holes were left unrepaired on the living room wall but finding that the Landlord has not shown on a balance of probabilities that the Tenant caused damage over reasonable wear and tear to the light switch, I find that the Landlord has substantiated a loss in relation to the wall. As the invoice for the work to this wall is not itemized, I can only provide a nominal entitlement for the damage to the wall in the amount of **\$100.00**. Accepting that the Tenant agreed to having damaged the floor but also accepting the evidence of pre-existing damage from both the previous tenant and the Landlord, I find that the Landlord has proven an entitlement to compensation for damage but not to the extent claimed. I find that the Landlord is therefore entitled to a nominal percentage of the costs in the amount of **\$140.00** to reflect the Tenant's contribution. Given the letter from the previous tenant, I find that the Landlord has not proven on a balance of probabilities that the baseboard and drywall in the basement room was damaged by the Tenant and I dismiss claims for these repair costs. Given that the Tenant did not dispute the cost for the remote I find that the Landlord has substantiated its claim for **\$106.40** to replace the remote. As the Landlord's application has met with some success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$496.40**. Deducting this amount from the security deposit of **\$750.00** plus zero interest

leaves **\$253.60** owed to the Tenant. I order the Landlord to return this amount to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of \$496.40 from the security deposit plus interest in the amount of \$750.00 in full satisfaction of the claim.

I Grant the Tenant an order under Section 67 of the Act for **\$253.60**. 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: May 10, 2013

Residential Tenancy Branch

