



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

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

The Tenant applied on May 28, 2013 for:

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

The Landlord applied on June 5, 2013 for:

1. A Monetary Order for damage to the unit – Section 67;
2. A Monetary Order for unpaid rent – Section 67’
3. A Monetary Order for compensation – Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
5. 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.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on June 15, 2011. Rent of \$1,800.00 was payable monthly and at the onset of the tenancy the Landlord collected \$925.00 as a security deposit. No move-in condition inspection was conducted.

The Tenant states that in late January 2013, the Landlord called the Tenant and informed the Tenant that the Tenant would have to leave the unit by the end of March 2013. The Tenant states that the Landlord again called on April 25, 2013 and told the Tenant that they wanted to move into the unit as soon as possible. The Tenant states that it was very stressful to have been told to move but that they found another place to move into for May 15, 2013. The Tenant states that when they told the Landlord that they could be out of the unit on that date the Landlord told them that the Landlord wanted to move into the unit by May 13, 2013. The Tenant states that they then moved out of the unit on May 11, 2013 and returned the keys on May 13, 2013 when the move-out inspection was conducted. The Tenant states that the Landlord was moved into the unit on this date. The Tenant states that although a move-out inspection was conducted, no report was filled out. The Tenant claims return of the security deposit and compensation for having to move out the unit on short notice.

The Landlord states that they never told the Tenant that they wanted to move into the unit and that they received the Tenant's notice to end the tenancy on April 26, 2013. The Landlord states that as soon as they received this notice they provided a notice to end their tenancy for May 15, 2013. The Landlord states that they moved into the unit on May 19, 2013 from their rental unit where they had to pay a rent for May 2013. The Landlord states that the Tenant only paid rent to May 15, 2013, did not provide a month's notice and claim unpaid rent of \$900.00. The Landlord states that the Tenant provided its forwarding address in writing on May 29, 2013.

The Landlord states that the Tenant failed to clean the unit to a reasonable standard and left the unit damaged at the end of the tenancy. The Landlord provided photos of the unit. The Landlord states that the Tenant left the walls of the unit with marks and

scratches on all the walls and doors and that the Landlord had to repaint the unit. The Landlord claims \$612.00 to cover touch ups on the walls and \$150.00 for repairs to a door that had a hole that the Landlord patched. The Landlord states that they paid more than this to paint the entire unit. The Tenant states that while they did leave some dirty marks on the walls and some scratches, it was not to the extent claimed by the Landlord and that at move-in the walls were damaged. The Tenant states that \$300.00 would be fair compensation for the wall damage done during their tenancy. The Tenant states that when the move-out inspection was conducted, the Landlord had already moved into the unit and that there was no damage to any doors either during the tenancy or at the time of the inspection.

The Landlord states that the Tenant left the stainless steel stove dirty with a stain and scratches and claim \$375.00 for the loss in the value of the stove. The Landlord states that the stove cost \$1,019.00 and was brand new when the tenancy started. The Landlord states that the Tenants were not given any instructions on cleaning or care of the stainless steel. The Tenant states that the stove was cleaned and agrees that there was a stain on the stove that could not be removed. The Tenant states that the stain and any scratches are from normal wear and tear.

The Landlord states that the Tenant left the kitchen blinds stained and the living room blinds damaged and unable to unfold. The Landlord states that the kitchen blinds could not be cleaned and claims \$400.00 for the replacement of both blinds. The Tenant states that the blinds were left in the same condition they were in at move-in and that the living room blinds were never able to be opened.

The Landlord states that the Tenant removed a shower rod and claims \$25.00 for its replacement. The Landlord states that the shower rod has not been replaced and the amount is the approximate cost of a new one. The Tenant states that there was no shower rod in the bathroom at move-in so they purchased their own and removed it when they moved.

The Landlord states that the garbuerator is missing something but does not understand what it is only that it was there at the beginning of the tenancy and now is missing and the garbuerator is not working properly. The Landlord states that a repair person told them that the piece missing keeps food from coming back up into the sink and that the entire garbuerator needs replacement in order to fix the problem. The Landlord states that the Tenant knew nothing about this problem and claims \$25.00 to replace the missing garbuerator part.

The Landlord states that the Tenant left a cover plate missing on an outlet and claims \$15.00. The Tenant states that nothing was missing at move-out and that this was never seen.

The Landlord states that the fake wood in the fireplace was broken and claims \$15.00 to reattach the broken piece. The Tenant states that the fireplace was left in the same condition as at move-in.

The Landlord states that the Tenants did not really clean the unit well. The Tenant states that they moved out of the unit on May 11, 2013 and that the unit was cleaned by a professional the next day. The Tenant states that they had paid rent to May 15, 2013 and that on the move-out inspection of May 13, 2013 they wanted to clean further but no chance was given to them from the Landlord. The Landlord claims \$40.00 for the costs of two hours of cleaning.

The Landlord states that in February 2013 the Tenant had a plumber replace the kitchen faucet without the Landlord's consent or knowledge. The Landlord states that at move-out the Tenants told the Landlord that this was done in an emergency asked to be reimbursed their costs and presented a bill from a professional plumber. The Tenant states that when the faucet started to leak they tried to call the Landlord without response and that as it was an emergency they called a plumber found in the yellow pages. The Tenant states that the faucet was replaced, leak was fixed and the plumber said all was good.

The Landlord states that on May 22, 2013 the faucet began to leak again and the Landlord called the same plumber who told the landlord that he fixed the first leak. The Landlord states that the replacement faucet was cheap. The Landlord states that the Tenant allowed water to seep through the countertops damaging the wood inside. The Landlord states that the Tenants replaced the faucet during the tenancy but that it was not installed properly. The Landlord claims \$3,300.00 to replace the sink, faucet and countertop and damaged cupboards. The Tenant states that they had no further problems with the leak and that they were not aware of any damage to wood. It is noted that the Landlord did not provide any photos of damaged cupboards or countertop.

The Landlord provided letters from persons setting out their knowledge of the tenancy and the state of the unit while the Landlord lived in the unit. It is noted that one letter dated June 1, 2013 from a friend of the Landlord states that the Landlord had decided in 2011 to rent the unit temporarily while the Landlord was in Korea. It is also noted that one person speaks to the state of the unit at move-out but does not indicate being present or having knowledge of the unit at move-in.

Analysis

Section 49 of the Act sets out the circumstances under which a landlord may end a tenancy. Where a landlord ends a tenancy for its own use of the rental unit, the landlord must provide the tenant with a two month notice in the appropriate form. Section 51 of the Act provides that where a tenant receives such a notice, the tenant is entitled to compensation equivalent to one month's rent. Section 50 of the Act provides that where a landlord gives a notice to end the tenancy for the landlord's use, the tenant may end the tenancy early by giving the landlord at least 10 days notice. The tenant is only required to pay rent to the effective date of the notice. Section 5 of the Act provides that a landlord or tenant may not avoid the Act.

Although the Landlord denies telling the Tenants that they wanted to move into the unit, overall consideration of both Parties' evidence, in particular the Landlord's reasons for

the rental of the unit in the first place and the fact that the Landlord did move into the unit at the end of the tenancy leads me to find on a balance of probabilities that the Landlord sought to end the tenancy for its own use and gave the Tenants oral notice to end the tenancy as early as possible. The Tenants obliged by giving a notice to end the tenancy and moving out of the unit early. As the Landlord did not provide the equivalent of one month's rent to the Tenants as required under the Act, I find that the Tenant's are entitled to compensation of **\$1,800.00**. As the Tenants paid their rent to May 15, 2013, the date that the tenancy was to end and as the Landlord had possession of the unit on that date, I find that the Landlord is not entitled to any additional rent from the Tenant and I dismiss the Landlord's claim for unpaid rent

Section 23 of the Act provides that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not offer at least two opportunities for a move-in inspection. Based on the undisputed evidence that no move-in inspection was conducted, I find that the Landlord failed to offer an opportunity to the Tenants to conduct a move-in inspection and that the Landlord's right to claim against the Tenant's security deposit for damages to the rental unit has been extinguished. As such I find that the Tenant is entitled to the amount of **\$925.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the 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. 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, 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.

Given the lack of a move-in report, I accept the Tenant's evidence that some scratches were left by the Tenants at the end of the tenancy and that some damages were present at the time of move-in. As such I find that the Landlord has substantiated a portion of its claim for the cost to paint the walls in the amount of **\$300.00**. Noting that no move-out report was completed between the Parties on the date of the inspection, I accept the Tenant's evidence that the Landlord was already moved into the unit at the time of the move-out inspection. I find therefore that the Landlord has not substantiated that the Tenants caused the door to be damaged and I dismiss this claim.

Given the photos of the stove and the Tenant's evidence that some damage occurred during the tenancy, I find that the scratches left are more than reasonable wear and tear and that the Tenant caused some damage. However, taking into consideration that the Landlord did not provide the Tenant with instructions on the care of stainless steel appliances, and taking into account that the damages are cosmetic in nature and do not affect the overall operation of the stove, I find that the Landlord has only substantiated a nominal amount of **\$100.00** for a reduction in the value of the stove.

Although the Landlord provides letters from friends in relation to the unit, none of these persons provided evidence of having seen the unit both at move-in and move-out or during the tenancy and I consider this evidence to be of little to no weight. Given the lack of a move-in condition report and considering the Tenant's evidence denying damage to the blinds, shower rod, cover plate and fireplace wood, I find that the Landlord has not proven on a balance of probabilities that the Tenants damaged or removed these items and I dismiss the Landlord's claims for the costs in relation to these items.

Based on the Landlord's evidence that the Tenant did not know that there was a problem with the garbuerator, considering that the Landlord does not know exactly what the problem is and considering that the Landlord did not supply any evidence from a

repair person of the problem, I find that the Landlord has not substantiated that the Tenant caused any damage to the garbuerator and I dismiss this claim.

Given the photos of the unit, I find that the Tenant failed to clean the unit to a reasonable standard on the date of the move-out inspection however I note that the Tenants had paid the rent to May 15, 2013 and I accept the evidence that the Landlord failed to provide the Tenants more time to clean the unit to a reasonable standard. I find therefore that the Landlord failed to take reasonable le steps to mitigate the loss claimed and I dismiss the claim for cleaning the unit.

It is noted that after the tenancy ended the Landlord called the same plumber who repaired the faucet in February 2013 but did not provide any evidence from this person of the state of the sink area or cupboards at February 2013. Nor has the Landlord provided any evidence of this damage being noted at move-out. Given that none of the photos show damage to a counter top or cupboards, noting that while the sinks appear to be scratched there is no move-in report indicating the state of the sink at move-in, and considering that there is no evidence of a wood damage either before or following the repair of the faucet by a professional plumber until after the tenancy ended, I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenants caused the damages claimed and I dismiss the claims for the costs to replace the sink, countertop, faucet and cupboards. Given that the Tenant did not provide any invoice or bill for the cost of emergency repairs, I find that the Tenant has failed to establish the costs claimed and I dismiss this claim.

The Tenant's entitlement is \$2,725.00. As the Tenant has been substantially successful with its application I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,775.00**. The Landlord's entitlement is **\$400.00**. AS the Landlord's application has met with minimal success, I decline to award recovery of the filing fee. Deducting the Landlord's entitlement from the Tenant's entitlement leaves **\$2,375.00** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$2,375.00**. 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: September 20, 2013

Residential Tenancy Branch

