



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, 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. A Monetary Order for damages to the unit – 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.

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 April 1, 2013 and ended on May 31, 2013. Rent of \$550.00 was payable monthly and at the outset of the tenancy the Landlord collected \$275.00 as a

security deposit. The Parties mutually conducted a move-in condition inspection and report and a move-out inspection and report.

The Tenant states that at move-in the inspection it was hurried as the Tenant wished to start moving in to the unit. The Landlord states that during the move-in inspection the Tenant remarked several times on the excellent state of the unit. The Tenant states that they moved out of the unit prior to the move-out inspection that was conducted on May 28, 2013.

The Landlord states that the Tenant gave notice to end the tenancy on May 7, 2013 to end on May 31, 2013. The Landlord states that the unit was advertised around the middle of May 2013 in an online site and on posters at the local businesses. The Landlord states that the unit was advertised at a rental rate of \$600.00. The Landlord states that the unit has not been filled to date as the unit is located in a rural area that has lots of vacant rentals. The Landlord claims rent for June 2013. The Tenant states that no rental ads were found on the online site as stated by the Landlord.

The Landlord claims \$10.33 for the cost of the registered mail service.

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

- \$37.50.00 for 1.5 hours of cleaning to the unit: stove elements, shower stall, removal of sticky spot on carpet, wiping smudges on walls and door frame. The Tenant states that the sticky spot on the carpet was there at move-in. The Tenant states that the shower stall was cleaned but that a mineral buildup residue from the water supply was left. The Tenant states that the walls were wiped down and that any marks or smudges left were reasonable wear and tear. The Tenant states that they do not know how the door frame was marked but that no furniture was moved against this area.

- \$87.50 for the labour to clean the patio of paint stains left by the Tenant. The Tenant states that a item was painted on the patio and that at the move-out inspection the Tenant offered to clean the stains and power wash the patio however the Landlord refused the Tenant this opportunity. The Landlord does not dispute this refusal.
- \$45.00 for the costs of materials on hand to patch two holes on the walls and the scrape marks on the door frame. The Tenant states that the holes on the walls were normal wear and tear, not any intentional damage, and does not know what caused the marks on the door frame;
- \$181.63 for the costs of removing paint marks and power washing the patio. The Tenant states that they own their own power washer and would have repaired those marks had the Landlord allowed them. The Landlord states that the Tenant was refused the opportunity to clean the patio as the Tenant is careless and would not want her or her boyfriend to carry out the cleaning.

The Tenant states that the tenancy ended as the Landlord told the Tenant that she would have to pay an additional \$125.00 for her boyfriend to occupy the unit. The Tenant states that she did pay this amount for May 2013. The Landlord confirms that nothing in the tenancy provides for an additional rental amount for additional occupants but that the tenancy agreement was amended orally to increase the rent.

Analysis

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. Although the Tenant did not give a full month's notice to end the tenancy, I find that by

increasing the rental amount payable for the advertisement of the unit, the Landlord did not act reasonably to mitigate the lost rental income claimed. I also take into account that the Tenant's action in ending the tenancy without a full month's notice did not cause the rental loss given the Landlord's evidence of the extent of rental units available and that the loss was more likely incurred due to market conditions and not the act of the Tenant. I therefore dismiss the Landlord's claim for June 2013 rent.

Given the undisputed evidence that the Landlord refused the Tenant an opportunity to remedy the damages to the patio and noting that the Tenant still had time left to the end of the tenancy to carry out this task, I find that the Landlord failed to act reasonably to mitigate the costs claimed in relation to the patio and I dismiss all costs claimed in relation to the patio. Given the Landlord's photo evidence of the unit, I find on a balance of probabilities that the Tenant failed to leave the unit cleaned to a reasonable standard and that the Landlord is therefore entitled to the **\$37.50** claimed.

Given the Tenant's evidence that no furniture scraped the door frame and noting that the photo appears to show a problem with a lack of space between the upper part of the door and the frame, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused this damage. I do not find the holes on the walls to be reasonable wear and tear and find that the Landlord has therefore substantiated a nominal amount of **\$20.00** for the cost to repair the walls.

As the Act does not provide any relief for costs associated with the dispute other than the filing fee, I dismiss the Landlord's claim for service costs. As the Landlord has only been minimally successful with its application, I decline to award recovery of the filing fee.

An oral agreement cannot change a written agreement. Given the undisputed evidence that the Landlord increased the rent by \$125.00 for May 2013 based on an oral agreement and noting that nothing in the tenancy agreement provides for additional rent upon additional occupants, I find that the Landlord acted contrary to the Act and the

tenancy agreement and was enriched by this act. Given this enrichment, I find that the Landlord has already been more than reasonably compensated for the entitlements found at this hearing and I decline to reduce the security deposit by the entitlement amount. I order the Landlord to return the security deposit of \$275.00 plus zero interest to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$275.00**. 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 16, 2013

Residential Tenancy Branch

