



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenant. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant applied for partial recovery of the security deposit and further monetary compensation. The tenancy agreement named two tenants, father and son, though the father was the sole occupant of the rental unit during the tenancy. The landlord and the son, as a respondent and agent for his father, both participated in the conference call hearing over all three dates of August 8, 2013, September 19, 2013 and November 1, 2013.

The hearing was adjourned on August 8, 2013 to address issues regarding service of evidence. At the reconvened hearing on September 19, 2013, both parties confirmed that they had received the other party's evidence. Neither party raised any further issues regarding service of the application or the evidence. The hearing ran over its allotted time on September 19, 2013, and so it was adjourned a second time and reconvened a third and final time on November 1, 2013. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 1, 2010. The elderly occupant and his adult son are both identified as tenants on the tenancy agreement, and both signed the tenancy agreement. The rental unit is a small studio in a separate building on the same property

as the landlord's residence. The occupant tenant's son lived across the street from the rental unit and the landlord's residence. In this decision, I may refer to the occupant, or his son, or both as "the tenant."

The monthly rent was \$650. Utilities were not included. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$325. On January 28, 2010 the landlord and the tenant carried out a move-in inspection and completed a condition inspection report. The tenancy ended on April 30, 2013. On that date, the landlord and the tenant carried out a move-out inspection. The tenant did not agree with the landlord's assessment of damage to the unit for which the landlord believed the tenant was responsible.

Landlord's Claim

The landlord stated that in February 2013 he went into the rental unit to do maintenance, and he noticed that the hot water tank was turned off; it was very cold in the bathroom and the humidistat and heater were off; and many surfaces had condensation and mould on them. The landlord stated that he emailed the occupant's son, and the occupant's son said he would take care of the problems. The occupant's son did not complete the work, and at the move-out inspection there was all open drywall and the unit was absolutely filthy.

The landlord has claimed compensation for the following:

- 1) \$53.40 for outstanding electrical for April 2013;
- 2) \$13.99 for a replacement fan light glass shade;
- 3) \$300 for 15 hours of cleaning, at \$20 per hour;
- 4) \$300 for 5 hours of painting;
- 5) \$352.02 for estimated costs to repair missing drywall;
- 6) \$146.52 for estimated costs to repair the damaged vapour barrier behind the drywall, which the tenant caused;
- 7) \$771.57 for estimated costs to replace carpet that was permanently stained and smelled strongly of mildew, even after cleaning;
- 8) \$104.86 for removal and disposal of drywall that tenant left outside after removing and removed carpet; and
- 9) \$60 for estimated cost to replace curtain and bathroom blind.

In support of his claim, the landlord submitted photographs, move-in and move-out condition inspection reports, invoices and estimates.

On a fax cover sheet for one package of evidence submitted by the landlord, an agent of the Residential Tenancy Branch wrote a note that the landlord "is asking for \$650 for the month of May 2013 also." However, the landlord did not submit an amended application or request an amendment in the hearing to reflect this additional claim. The landlord also stated that he decided not to re-rent the unit. I therefore did not amend the landlord's application to include lost revenue for May 2013.

The tenant's response to the landlord's claim was as follows. The tenant acknowledged that the landlord was entitled to the amounts claimed for the unpaid hydro bill and the fan light glass shade, as well as some costs for cleaning, for a total of \$158.39. The tenant disputed the remainder of the landlord's claim.

The occupant's son acknowledged that his father was frugal, and he therefore did keep the heat low and most often turned off the hot water tank. He stated that he did tell the landlord he would take care of removing and replacing the drywall, and he got to it as soon as he could. The tenant removed the drywall and did cut the vapour barrier when he did so, but he stated that this happens frequently and it can be re-sealed. When he removed the drywall, he found insect casings, growing grass and rodent tracks, which the tenant stated were all signs that the vapour barrier had not been fully sealed as required. The tenant therefore believed that the landlord was responsible for any cleaning or repairs needed due to mould.

The tenant did not believe that the ceiling had to be painted or that so much cleaning was required for a very tiny unit. The tenant acknowledged that there was one rust stain on the carpet which was about the size of a toonie, but that did not mean the entire carpet had to be removed.

Tenant's Claim

The tenant claimed recovery of the balance of the security deposit, as well as reimbursement for basic cable and recovery of the final month of rent.

The tenant pointed out that cable was to be included in the rent. The tenant stated that almost immediately after the tenancy began, they began having problems with cable service. The Landlord was going to deal with it, but the issue was not resolved. The tenant then arranged for his own cable service. The tenant seeks reimbursement of basic cable of \$39.20 per month for 26 months, for a total of \$1,019.20.

The tenant stated that their privacy was invaded when the landlord was given access to the rental unit to do repairs in the bathroom, but then he was looking for mould in other parts of the unit and took photographs of inside the fridge and cupboards, as well as of

the tenant's bed and other possessions. The tenant was extremely upset when the landlord turned up the heat, the fan and the humidifier, and opened the windows while the tenant was not in the unit. The tenant also believed that the mould in the rental unit was having a negative impact on his health.

The landlord's response to the tenant's claim was as follows. The landlord thought that the tenant chose to get a separate cable line in order to also get internet service. The landlord thought that the tenant had a faulty modem, which was why internet service kept shorting out. The landlord offered the tenant cable, but the tenant wanted to put in his own line.

The landlord stated that he always gave notice before entering the rental unit, and he would usually do a courtesy vacuuming each time he went into the unit. He did three hours of cleaning in the rental unit in March 2013, and stated he didn't mind doing it, because he was protecting his property.

Analysis

Upon consideration of the evidence, I find as follows.

Landlord's Claim

The tenant acknowledged that the landlord is entitled to \$53.40 for the hydro bill and \$13.99 for the glass light shade, and I grant the landlord these amounts. I will address cleaning costs below.

In this case, as in many circumstances, it is difficult to assess the cause or causes for the occurrence of mould. In this case, I am not satisfied that the evidence clearly establishes that the tenant's actions, a faulty vapour barrier, or some other factor is solely the reason for mould in the rental unit. The occupant's son acknowledged that his father often kept the heat and use of electricity low, and it is likely that if the heat was kept low or off and the humidistat was not used, these actions by the tenant would contribute to development of mould. I therefore find that the landlord is entitled to nominal compensation for mould reparation, in the amount of \$100.

In regard to cleaning, I find that the rental unit did require cleaning aside from dealing with the mould. The tenant acknowledged that the landlord was entitled to some compensation for cleaning. I therefore find it reasonable to grant the landlord \$100 for five hours of cleaning at \$20 per hour.

The landlord did not provide sufficient evidence to establish that the carpet needed to be replaced because of the acknowledged stain, or the age of the curtain and blind that

he sought to replace. I therefore dismiss these portions of the landlord's claim, along with any other costs claimed as a result of mould.

Tenant's Claim

When the landlord did not address the cable issue to the tenant's satisfaction, the tenant could have made an application for a reduction in rent or for an order that the landlord comply with the tenancy agreement. However, the tenant did not do so and did not therefore take reasonable steps to reduce the loss. I therefore find that the tenant is only entitled to cable costs for three months, in the amount of \$117.60.

When a landlord seeks to enter the rental unit, they must give the reason for entering. If the landlord's reason for entering is to do repairs, it is not reasonable that the landlord then proceed to conduct an extensive inspection of the unit, take photographs, and turn on the heat, humidistat and fan, particularly when the tenant is paying for electricity. I find that the landlord's unreasonable actions did disturb the tenant's quiet enjoyment of his rental unit. However, this was an isolated incident, and the tenant did not provide evidence to show that his health was impacted by the mould. I therefore grant the tenant nominal compensation for loss of quiet enjoyment, in the amount of \$50.

Filing Fees

As neither claim was fully successful, I decline to award either party recovery of the filing fee for the cost of their application.

Conclusion

The landlord is entitled to \$267.39. The tenant is entitled to \$167.60. The landlord is therefore entitled to the difference of \$99.79. I order that the landlord retain this amount from the deposit in full satisfaction of his claim, and I grant the tenant an order under section 67 for the balance of the security deposit, in the amount of \$225.21. 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: November 21, 2013

Residential Tenancy Branch

