



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 damages to the unit – Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. 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 under oath. The Witness provided evidence under oath.

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 following are agreed facts: The tenancy started on July 1, 2013 and ended on November 1, 2013. Rent of \$1,200.00 was payable monthly and at the outset of the tenancy the Landlord collected \$600.00 as a security deposit. The Tenant owes **\$200.00** in unpaid rent for October 2013. The written tenancy agreement provides that the Tenant will pay half the utilities and the Tenant owes **\$41.30** for gas.

The Landlord states that the Tenant owes \$75.25 for the hydro. The Tenant states that she only owes \$50.00 for hydro. No bill was provided as evidence.

The Landlord states that the Tenant left the entrance wall going up the stairs with 12 patched holes and that it required painting. The Landlord states that a painter was hired to paint the wall and that this cost \$675.00. The Landlord limits its overall claim to \$600.00. The Tenant states that at the end of the tenancy the Landlord instructed her to only patch the walls and not to paint over them.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the agreed facts, I find that the Landlord has substantiated an entitlement to **\$200.00** for unpaid rent. Further based on the agreed facts that the Tenant is required to pay half of the utilities and the agreed facts that the Tenant has not paid for the gas owed, I find that the Landlord has substantiated an entitlement to **\$43.30** for the gas. As the Landlord failed to provide a copy of the hydro bill and considering that the Tenant agrees that she owes \$50.00 for the hydro, I find on a balance of probabilities that the Landlord has substantiated an entitlement to **\$50.00** for hydro costs.

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. Accepting the Tenant's persuasive evidence that the Landlord instructed the Tenant to only patch the wall at the end of the tenancy, I find that the Landlord has not proven on a balance of probabilities that the Tenant caused the costs claimed and I dismiss the

claim. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee.

Section 38 of the Act provides that where a landlord has not provided the tenant an opportunity to carry out a mutual inspection at move-in, the right of the landlord to claim against the security deposit for damages to the unit is extinguished. Section 72 of the Act provides that where a tenant is ordered to pay an amount to the Landlord this amount may be deducted from the security deposit. As the Landlord failed to carry out a move-in inspection, I find that the Landlord's right to claim against the security deposit for damages to the unit has been extinguished. The Landlord was informed of this at the hearing in relation to the claim for damages to the unit. However since the Landlord has not been successful with its claim for damages but has been successful with its claim for rent and utilities in the amount of **\$293.30** I find that I may deduct this amount owed by the Tenant from the security deposit plus zero interest of **\$600.00** leaving **\$306.70** owed by the Landlord to the Tenant.

Conclusion

I order that the Landlord retain \$293.30 from the **deposit** and interest of \$600.00 in full satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for **\$306.70**. 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: March 04, 2014

Residential Tenancy Branch

