



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MND, MNR, MNSD, MNDC

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. An Order of Possession – Section 55;
2. A Monetary Order for damages - Section 67;
3. A Monetary Order for unpaid rent - Section 67;
4. A Monetary Order for compensation - Section 67; and
5. An Order to retain the security deposit - Section 38.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the hearing evidence of the Parties indicated that the tenancy had ended in October 2013 prior to the date of the application. Further, it is noted that although a claim was made for unpaid rent, no amount was provided or included in the monetary amount being claimed on the application or the body of the application and no amendment to the application amount was made. As a result, I dismiss the claim for an order of possession and the claim for unpaid rent.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on February 1, 2013 although the Tenants moved in a few days later. Rent of \$1,400.00 was payable monthly. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Parties did not conduct or complete a move in or move out condition inspection and report. There is no dispute that the Tenants owe **\$634.60** for unpaid utilities.

The Landlord states that the Tenants painted the entrance and hallway without the permission of the Landlord and claims an estimated amount of \$150.00. The Tenants state that the Landlord gave them permission to use the paint and supplies as long as they are notified about the use. The Tenant states that the Landlord was notified and gave permission by text. The Tenant further states that the Landlord was at the unit after the walls were painted and did not ask the Tenants to repaint these areas. The Tenant states that would have repainted had the Landlord said something. The Landlord states that they did not notice the paint job when they were at the unit as stated by the Tenant and also states that the new paint color stands out as the rest of the unit is painted taupe and the new color is white.

The Landlord states that the closet doors in the bedroom on the main floor were left with sharpie marks that could not be removed. The Landlord claims \$250.00 for their replacement stating that this estimate came from Home Depot. The Tenant denies that any door was left damaged.

The Landlord states that the Tenants were given a rent discount totalling \$405.00 during the tenancy for the Tenants' agreement to place trim around the doors and windows. The Parties agree that some of that work was left uncompleted at the end of the tenancy. The Tenant states that the remaining work would require about 1 hour labour. The Landlord states that the Tenants agreed to do the work for supply costs only and that the landlord supplied some of the materials but not all.

The Landlord states that without permission the Tenants moved the deck boards together to close gaps and left the boards damaged to the extent that they require replacement. The Landlord also states that a different wood board was used to fill in the total gap areas that had been removed. The Landlord claims \$550.00 stating that this was their cost to install the deck. The Tenant states that the deck boards were left so far apart that their child's foot would get stuck in the gaps and due to the danger the Landlord agreed that the Tenants could move the boards closer together. The Tenant states that the boards are fine and suitable for their purpose and only requires sanding around the screw holes.

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.

Accepting the undisputed evidence that the Landlords attended the unit after the walls were painted and finding that the Landlord did not object at the time in order to give the Tenants an opportunity to repaint the walls, I find that the Landlord failed to take reasonable measures to mitigate any loss claimed and I dismiss this claim.

Given the lack of photos or of a move-in or move-out condition inspection report noting damages to the closet door and considering the Tenant's denial of damages to a closet door, I find that the Landlord has failed on a balance of probabilities to establish the damages claimed. I therefore dismiss this claim.

Accepting that an agreement was made for the completion of repairs to the trim and given the evidence that only some of the work for the rent discount was left incomplete,

I find that the Landlord has only substantiated a nominal amount of **\$100.00** for the costs to complete the work.

Given the undisputed evidence of safety issues, I find it more likely than not that the Tenants had permission to refix the boards on the deck. Given the Tenant's evidence of only sanding being left to finish and considering the lack of photos of the deck or any other supporting evidence of further damage to the wood, I find that the Landlord has failed to establish the amount claimed but has substantiated a nominal award of **\$100.00** for the sanding of the screw areas on the boards.

The Landlord has established a total entitlement of **\$834.60**. Deducting the security deposit of **\$700.00** plus zero interest from this amount leaves **\$134.60** owed by the Tenants to the Landlords.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$134.60**. 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: April 14, 2014

Residential Tenancy Branch

