



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, 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 December 19, 2013 for:

1. An Order for the return of the security deposit – Section 46; and
2. A Monetary Order for compensation – Section 67.

The Landlord applied on December 13, 2013 for:

1. A Monetary Order for damage to the unit
2. A Monetary Order for compensation – 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 Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the hearing the Tenant confirmed its claim for return of a month’s rent paid to the Landlord. As this was noted in the details of the application, I accept that the Tenant included this claim in its application.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on July 1, 2011 and the Tenant gave a month's notice to end the tenancy for November 30, 2013 but moved out of the unit on November 27, 2014. Rent of \$625.00 was payable monthly. At the outset of the tenancy the Parties mutually conducted a move-in inspection and a report was completed. The Tenant provided her forwarding address in writing on November 26, 2013. At the outset of the tenancy the Landlord collected \$362.50 as a security deposit. The Landlord did not return the security deposit and cashed the Tenant's government issued cheque for December 2013 rent.

Advocate CM states that she as the Tenant's caseworker she has background knowledge of the tenancy and matters in dispute. The Tenant states that the Landlord did not offer any move-out condition inspection. The Landlord states that he was told that the Tenant would not be coming back to the unit after the move out so he immediately commenced cleaning and making repairs. The Landlord states that he did go to her a few days later to show her the repairs. Advocate CM argues that had the Landlord asked to schedule an inspection, the Tenant would have been provided with help in carrying out the inspection. The Tenant claims return of double the security deposit.

The Advocate argues that as the tenancy had ended the Landlord had no right to take rent for December 2013 and claims the return of \$625.00.

The Landlord states that the Tenant failed to leave the unit clean and undamaged and claims as follows:

- \$360.00 for labour to clean the unit and remove garbage left behind;
- \$25.00 for cleaning supplies;
- \$11.25 for dump fees;
- \$320.00 to repair and paint damages to the unit; and
- \$75.00 for the cost to replace one horizontal blind and one vertical blind.

It is noted that no photos of the unit were provided by the Landlord.

The Landlord states that the Tenant told the Landlord that she would not be returning to the unit to clean and to just keep the security deposit. The Tenant states that the unit was not cleaned however the Advocate argues that the Landlord did not give the Tenant a chance to clean as he told the Tenant that she had to be out by noon on November 27, 2013.

The Landlord states that the drywall was scraped and chipped, the baseboards were broken and there was a hole in a door. The Tenant's Advocate states that while it is agreed that the door was damaged, the rest of the unit was undamaged except for black marks only on the walls. The Advocate argues that the amount claimed by the Landlord exceeds the amount of damage.

The Landlord states that two blinds were damaged by the Tenant and claims \$75.00 for their replacement. The Landlord provided a receipt for the costs claimed. The Landlord states that he does not know how old the blinds were but note that they were not damaged at move-in.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Landlord's evidence that the Tenant moved out of the unit on November 27, 2013, noting that the Landlord did not dispute telling the Tenant that she had to be out by noon that day, and considering that the Landlord immediately started cleaning and repairing the unit, I find that the tenancy ended on November 27, 2013 and that the Landlord had 15 days from that date to either return the security deposit or make a

claim against the security deposit. As the Landlord made its claim past the 15 days from the end of the tenancy I find that the Landlord is required to pay the Tenant double the security deposit in the amount of **\$725.00**.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the tenancy had ended the Landlord had no right to any rent for December 2013. Given the undisputed evidence that the Landlord took monies for this month without right I find that the Tenant has substantiated its claim to **\$625.00**.

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. Based on the Tenant's evidence I find that the Tenant failed to leave the unit reasonably clean. Although the Tenant argues that no opportunity was provided by the Landlord to return and clean the unit, I accept that the Tenant had no intention to return and clean the unit. Given the reasonable amount claimed for the cleaning of the unit and the removal of the garbage, I find that the Landlord has substantiated an entitlement of **\$396.25**.

Given the lack of photos and considering the Tenant's evidence that the damage was only black marks on the wall, I find on a balance of probabilities that the Landlord has not substantiated the extent of damages claimed and that the Landlord is only entitled to a nominal sum of **\$100.00** for the repairs. Given the move-in condition report in relation to the blinds and the provision of the receipt, I find that the Landlord has substantiated the claimed amount of **\$75.00**. As the Landlord has been successful with its application I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$621.25**.

Deducting the Landlord's total entitlement of **\$621.25** from the Tenant's total entitlement of **\$1,350.00** leaves **\$728.75** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$728.75**. 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: May 20, 2014

Residential Tenancy Branch

