



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, 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 unpaid rent - Section 67;
2. A Monetary Order for damages to the unit – Section 67;
3. A Monetary Order for compensation– 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 Tenants 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 it was noted that the Landlord provided a monetary worksheet with her evidence package indicating a larger claimed amount than contained in the Application. The Landlord confirmed that the application had not been amended to include the larger amounts in the worksheet. As the Application has not been amended, I find that the Landlord is restricted to the amount claimed in the Application.

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 November 1, 2011 and the Parties subsequently signed a fixed tenancy agreement to end November 30, 2013. Rent of \$1,700.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit and \$850.00 as a pet deposit. The Parties mutually conducted a move-in inspection. The Tenants moved out of the unit and returned the keys on November 2, 2013. The Landlord re-rented the unit for December 1, 2014 at a rental rate of \$1,750.00 per month.

The Landlord states that no move-out inspection was done with the Tenants. The Landlord states that the building manager was directed by the Landlord to arrange and attend a move-out inspection for the Landlord and that this person informed the Landlord that despite calling the Tenants twice to arrange an inspection the Tenants did not return the calls. The Tenants state that nobody called them and that they would have attended as they only moved a block away.

The Landlord states that the Tenants failed to pay November 2013 rent as required under the fixed term tenancy. The Landlord claims \$1,700.00 in unpaid rent. The Tenants state that they moved out of the unit on the advice of a surgeon who told them that the chemicals used to remove the mold during the tenancy were the likely cause of the medical problems of one of the Tenants. The Tenants provided a copy of an outpatient note dated April 29, 2014 in which the physician recommends that the Tenant "not return to her current residence which apparently she has suffered toxic exposures". The Landlord states that while chemicals were used to remove the mold, an air filter was also used in the unit. The Landlord disputes that anything done to remediate the unit from mold caused the Tenants to either be ill or to leave the unit.

The Landlord states that the Tenants failed to replace a door handle that had been removed by the Tenants during the tenancy and as a condition of the fixed term agreement were required to replace this handle. The Landlord states that she is

confused about why the lock or the door handle needed replacement and states that the door handle had been installed improperly causing the door to have problems closing. The Landlord claims \$60.00 for the repair of the door handle or the door lock. The Tenant states that during the tenancy they lost their keys to the unit inside the building and so replaced only the lock cylinder leaving a key for the Landlord as requested. The Tenant states that the handle and lock were separate and that the original lock cylinder with all the screws and pieces were left in a secure package for the Landlord at the end of the tenancy. The Landlord states that there was something missing from this cylinder.

The Landlord states that the door was also gouged by the Tenant and was cosmetically repaired by the handyman at the building. The Landlord provided photos of the door and claims the cost of \$150.00. The Tenant agrees that the door was damaged by their attempts to move out furniture but that the damage was only a scuff mark. The Tenant argues that it should not have cost the amount claimed and states that a more reasonable sum would be \$100.00.

The Landlord states that the Tenants failed to leave the unit reasonably clean and claims \$125.00 for the cost to clean the unit. The Landlord provided photos of the unit. The Tenants state that they left the unit reasonably clean except for the inside of the stove which had been seldom used by the Tenants during the tenancy. The Tenant states that the Landlord's photos show that the unit was reasonably clean.

The Landlord states that the dishwasher door handle did not work and that this was repaired by the handyman at a cost of \$50.00. The Landlord states that the dishwasher was purchased new in November 2012 and that the Landlord does not know whether it was still under warranty at the end of the tenancy. The Landlord states that the Tenants must have damaged the door handle. The Tenants state that the machine was a cheaper model and that the door handle stuck slightly right from the beginning making it difficult to open and close but that the handle was working fine at the end of the tenancy.

The Landlord states that the Tenants left the unit without replacing light bulbs and that the Landlord replaced these bulbs at a cost of \$10.50. The Tenant states that they were not aware that any light bulbs were not working. The Landlord states that it was obvious that at least one light bulb in the pantry was not working as it was dark.

The Landlord states that the Tenants left the unit with gouges on the hardwood floors and claims \$700.00 to either repair the floors or for the loss of the floor's value. The Landlord states that the floors have not been repaired. The Tenant states that there were no gouges and that the Landlord's photos show only small indents in one small area. The Tenant denies causing the marks and states that these would likely have occurred during the remediation work done in the unit as all the appliances were brought out of the kitchen and placed on the hardwood floors. The Tenant provided photos of the appliances in the unit during the remediation work. The Landlord states that she was not informed that any damages were left after the remediation work and states that the company hired for the work were professionals who used runners and mats under the furniture.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. I do not consider a medical report that is dated a few months after the end of the tenancy and that recommends that the Tenant leaves a "current residence" to be evidence to support the Tenants claim that they were urgently required to leave the unit. I also consider an unsigned medical letter not on any letterhead to be weak evidence. Given the fixed term tenancy was ended November 30, 2013 and given the undisputed evidence that the Tenants failed to pay November 2013 rent I find that the Landlord has substantiated an entitlement to **\$1,700.00**.

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. 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.

Given the confusion of the Landlord in relation to whether the door lock or the door handle was replaced or required replacement, noting that the only evidence of damage was to the door handle and considering that the Tenant's evidence that only the lock was replaced, I find that the Landlord has failed to substantiate the costs or damages claimed and I dismiss this claim. Given the photos of the marks on the door and the Tenant's evidence of responsibility for causing the marks I find that the Landlord has substantiated that the Tenant caused the damage and given the costs incurred for the repair, I find that the Landlord has also substantiated the costs claimed. I therefore find the Landlord is entitled to **\$150.00** in compensation.

Considering the Landlord's photos of the unit overall I find that the Landlord has failed to substantiate that the Tenants did not clean the unit to a reasonable state. I therefore dismiss the claim for cleaning costs. Given the Landlord's evidence that no investigation was made to determine whether the dishwasher was under warranty and considering that the dishwasher was likely not yet a year old, I find that the Landlord failed to take reasonable steps to mitigate the costs claimed and I therefore dismiss the claim for costs to repair the dishwasher.

Given the Landlord's photos of missing light bulbs and considering the Tenant's evidence of not considering the light bulbs at the end of the tenancy, I find that the Landlord has substantiated that the Tenants left the unit without replacing light bulbs. I find therefore that the Landlord is entitled to the claim of **\$10.50**.

Considering the undisputed evidence that appliances and other items were moved about on the hardwood floors for the purposes of the remediation of the unit and considering that size, shape and location of the marks as shown in the photos tend to support that heavier objects were on the floor, I find that the Landlord has failed on a balance of probabilities to substantiate that the Tenants caused the marks. I also note that the floor was not repaired and the unit was rented at a higher amount, contrary to the Landlord's evidence of a loss in the rental value of the unit. I therefore dismiss the claim in relation to the floor.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,910.50**.

Deducting the security deposit plus zero interest of **\$1,700.00** from this amount leaves **\$210.50** owed by the Tenants to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest in the amount of \$1,700.00 in partial satisfaction of the claim.

I grant the Landlord an order under Section 67 of the Act for **\$210.50**. 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: June 17, 2014

Residential Tenancy Branch

