



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, 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 February 27, 2014 for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 8, 2014 for:

1. A Monetary order for damages to the unit – Section 67;
2. A Monetary Order for compensation – Section 67; and
3. 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.

Preliminary Matter

After hearing the Tenant’s claim in full on June 9, 2014, it was determined that the Landlord’s correct application and materials was not provided to the Arbitrator by the Residential Tenancy Branch. The Landlord stated that his application was made on March 13, 2014 and that his evidence package was provided to both the Tenant and the Residential Tenancy Branch shortly thereafter. The Landlord confirmed that he did not make an application dated February 18, 2014 as contained in the file in front of the

Arbitrator. The Tenant confirmed receipt of the Landlord's application dated March 13, 2014 and the evidence package. The Landlord requested an adjournment in order to ensure the correct evidence and application is provided for the presentation of his claim at the hearing. The Tenant was not agreeable to an adjournment

Given the circumstances and accepting that the concurrent presence of the correct application and evidence would be reasonably required so as not to limit the Landlord's opportunity to clarify written and documentary submissions if necessary, I granted the adjournment solely for the purpose of hearing the Landlord's 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 agreed facts: The tenancy started on September 1, 2011 and ended January 31, 2014. Rent of \$1,900.00 was payable monthly on the first day of each month and at the onset of the tenancy the Landlord collected \$950.00 as a security deposit. Although the Parties did a walk through prior to the tenancy agreement being signed no move-in inspection and report was completed. The Tenant provided its forwarding address on February 1, 2014.

The Tenant states that the Landlord has failed to return the security deposit and claims \$1,900.00. The Landlord states that the security deposit was returned to the Tenant when the Tenant deducted \$1,000.00 from the January 2014 rent payable. The Landlord claims an overpayment of \$50.00 on the return of the security deposit.

The Tenant states that prior to signing the tenancy agreement the Landlord agreed to repair and paint walls of the unit which had fractures from either the building settling or poor construction. The Tenant states that the repairs were a condition of the tenancy and that the Landlord agreed to the repairs so the Tenant signed the agreement. The

Tenant states that the Landlord asked the Tenant to provide a quote for the repairs after which the Landlord would decide upon its acceptance. The Tenant states that the Landlord was given a quote for \$1,400.00 and the Landlord accepted this quote and subsequently told the Tenant to have the repairs carried out. The Tenant states that the Landlord accepted a \$1,000.00 reduction from the last month's rent for the repairs and has failed to pay the remainder. The Tenant claims \$400.00.

The Landlord states that at the onset of the tenancy the walls were not damaged to the extent claimed by the Tenant. The Landlord states that there were only paint cracks requiring a paint job and that the Tenant was informed that the quote was too high but that the Tenant insisted on this amount. The Landlord states that he only agreed to pay the Tenant \$1,000.00 for the repairs and that this was conditional on the unit being acceptable at the end of the tenancy. The Landlord states that the Tenant was given the choice to move out if he did not agree.

The Landlord states that the Tenant left the unit unclean and with damages. The Landlord claims as follows:

- \$325.00 for the cost of cleaning the unit;
- \$250.00 to replace a missing bedroom door closet;
- \$300.00 for the cost of repairs to three doors;
- \$1,400.00 for the cost of repairing and painting the walls; and
- \$800.00 for the cost of repairing and cleaning the carpet.

The Landlord provided photos of the unit and states that they were taken by the real estate agent prior to the real estate agent cleaning the unit and carpet at a cost of \$500.00 to the Landlord. The Landlord states that the unit is currently for sale as is but requires more cleaning and the carpets will likely require replacement. The Landlord states that the repairs being claimed to the unit are not done and the amounts being claimed above were estimates provided by the real estate agent. The Landlord states

that the real estate agent inspected the unit at the end of the tenancy and provided a written report and email on the state of the unit.

The Tenant states that the unit and carpet was left as clean it was at move in and was perhaps a bit better at the end. The Tenant states that there was no bedroom door closet at move-in. The Tenant states that he may have scratched a door. The Tenant states that the walls that were not painted by the Tenant during the tenancy were in the same condition as at move-in.

Analysis

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other 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 that the agreement for repairs to the unit was not set down clearly in writing but considering the Landlord's evidence that the amount agreed to was \$1,000.00, I find that the Tenant has not substantiated any agreement to pay for repairs over this amount. I therefore dismiss this part of the Tenant's application. Although the Landlord claims damages to the unit, given the Tenant's denial of damage to everything except one door, considering that there is not move-in inspection report detailing the condition of the unit, and considering the Landlord's evidence of walls that required painting at the outset of the tenancy, I find that the Landlord has not substantiated that the Tenant caused all the losses being claimed by the Landlord. Given the Tenant's evidence of possible damage caused to one door, I find that the Landlord has substantiated a nominal entitlement of **\$100.00** and I dismiss the Landlord's remaining claims. As the Landlord has had minimal success with its application I decline to award recovery of the filing fee.

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. Although the Landlord argues that the security deposit was paid to the Tenant when the Tenant deducted \$1,000.00 from January 2014 rent, I find it more likely that this amount represented the agreed amount for the move-in repairs. I therefore dismiss the Landlord's claim for the return of an overpayment. As the Landlord did not return the security deposit or make a claim within the time frame required, I find that the Tenant is entitled to return of double the security deposit in the amount of **\$1,900.00**. As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,950.00**. From this entitlement I deduct the Landlord's **\$100.00** entitlement leaving **\$1,850.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,850.00**. 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: August 22, 2014

Residential Tenancy Branch

