



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on April 23, 2014 for:

1. An Order for unpaid rent or utilities - 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 Tenant applied on May 7, 2014 for:

1. An Order for the return of the security deposit – Section 38; and
2. 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.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on January 1, 2012 and ended on April 15, 2014. Rent of \$2,280.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. No move-in condition inspection was conducted. The Tenant provided its forwarding address on April 18, 2014. The security deposit was not returned to the Tenant. The Tenant owes the Landlord \$366.27 for unpaid utilities.

The Tenant claims return of the security deposit.

The Landlord states that a move-out inspection was offered but was refused by the Tenant. The Tenant states that no move-out inspection was offered until a week after the tenancy ended.

The Landlord states that during the tenancy the Tenant caused a flood from the bathroom claw foot tub that damages the flooring and ceiling of the room under the bathroom. The Landlord states that he was not told of this incident until the day of the Tenant's move-out when the Tenant told the Landlord that the Tenant made repairs to the bathroom. The Landlord states that the repairs were so poorly done that they had to be redone. The Landlord states that most contractors were not available to make the repairs during the summer and that those who were available were very reluctant as the flooring was original to the unit which is registered as a heritage house. The Landlord states that he obtained an estimate from the only company that he found willing to undertake the job and that this had not yet been done. The Landlord states that it will cost over \$7,000.00 for the repairs. Photos were provided by the Landlord.

The Tenant states that the bathroom was damaged during the tenancy by a leaking toilet and that the Tenant informed the Landlord when this occurred. The Tenant states that he made the repairs himself at a minor cost as the leak occurred from a worn out ring at the base of the toilet. The Tenant states that the Landlord thanked the Tenant for the repairs. The Tenant states that the floors were only slightly damaged.

The Landlord states that the Tenant left the dining room, living room, landing and master bedroom walls damages by holes and that although the Tenant puttied and painted over the areas, the Tenant did not sand first and the colors did not match. The Landlord states that the Landlord provided the Tenant of the brand name and color of the paint but that the Tenant purchased a different paint and the colors did not match. The Landlord states that the walls had been painted just prior to the tenancy and provided a letter stating this fact from a real estate agent that saw the unit at this time. The Landlord claims \$900.00 for the paint and labour and provided the invoice for the completed work. The Tenant states that at move-in the walls of the unit had lots of drywall anchors left in the walls and that the landing had numerous punctures and scrapes. The Tenant states that the walls appeared to him to have been about a year or two old at the outset of the tenancy. Photos were provided by the Landlord.

The Landlord states that the Tenant was provided with a new gas lawn mower for use during the tenancy and that at the end of the tenancy the lawn mower was damaged to the extent that it required replacement. The Landlord claims \$350.00 for its replacement. The Tenant states that he did not know the lawnmower was broken, last used the lawnmower in the fall and denies causing the damage.

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. Based on the undisputed evidence that the Tenant owes the Landlord for unpaid utilities I find that the Landlord has substantiated its claim for **\$366.27**.

Although the Tenant claims to have no knowledge of any problem with the lawn mower considering that the Landlord provided a photo of the lawnmower to support visible damage and noting that the Tenant did not raise any issues with the photo, I find that the Landlord has substantiated that the Tenant caused the lawn mower to be damaged to the extent its replacement was required. Given the receipt for the cost claimed I find that the Landlord is entitled to **\$358.00**.

There is no dispute that the floor was damaged to some extent by water. The Tenant states that it occurred from a toilet leak. The Landlord states that it occurred from a tub overflow. The Landlord provided two photos of wood flooring but there is no claw foot tub shown near the damaged areas depicted, which appears to be contained to a couple of boards of an unknown length near a wall. Although the photos do not provide any visual of the toilet either, as the Landlord has the burden of proof, I find that the Landlord has failed to provide sufficient evidence to establish on a balance of probabilities that the Tenant caused the damage by negligently allowing the tub to overflow and I dismiss the claim for repair costs to the bathroom ceiling and flooring.

Based on the photos of the unit that appears to show anchors were present at move in along with photos of the patched areas and the letter from the witness of the unit prior to the start of the tenancy, I find that the Landlord has substantiated on a balance of probabilities that the Tenant left the walls with some damage. I note however that the amount claimed by the Landlord for the cost to paint the areas appears to be excessive and the invoice does not detail the size or areas covered for the work done. As a result I find that the Landlord is only entitled to a nominal amount of **\$300.00** for the damages left to the walls.

Deducting the security deposit of **\$1,100.00** plus zero interest from the Landlord's entitlement of **\$1,024.27** leaves **\$75.73** to be returned to the Tenant. As neither party has been fully successful with its application, I decline to award recovery of the filing fees.

Conclusion

I Order the Landlord to retain the security deposit plus interest of **\$1,100.00** in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$75.73**. 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 27, 2014

Residential Tenancy Branch

