



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 review 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 damages to the unit - Section 67;
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 Landlords and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on December 1, 2013 and ended on May 31, 2014. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Tenant does not dispute the Landlord’s claim for \$193.89 for damages to a sink. The Parties mutually conducted both a move-in and move-out inspection with completed reports.

The Landlord states that the Tenants damaged a French door during the tenancy and that the technician from the company that originally provided the door in 2006 told the Landlord that the damage could not have occurred from normal wear and tear or spontaneously. The Landlord states that several other contractors have also shared this opinion and the opinion that the door was damaged by the application of force or significant pressure. The Landlord states that she

did not obtain estimates from any door company other than the original door company as that there would be higher costs in relation to fitting the door. The Landlord states that this door has not been replaced but was repaired temporarily sometime after the Tenants moved out. The Landlord states that the unit was empty until recently as it was for sale. The Landlord states that the door requires replacement for the current tenancy and that the Landlord was waiting for the outcome of this dispute before replacing the door. The Landlord claims \$1,333.85 for the door replacement and \$84.00 for the temporary repair costs.

The Tenant states that the French door opens to an outdoor patio and that since the onset of the tenancy the door never sealed properly. The Tenant states that they never used the door over the winter months and that it was not noticed until the Landlord's Agent noticed it in April 2014. The Tenant states that at the time the Landlord told them they were not responsible however the Landlord did nothing to repair the door and that the lack of a seal allowed cold air into the unit. The Tenant states that the move out inspection report notes the door was broken from a design flaw. The Tenant states that his research indicates that this type of door requires a great deal of maintenance. The Tenant states that the constant opening and closing of the door to an outdoor environment caused the wood to split over the past approximate 8 years. The Tenant provided photos of the doors.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must, inter alia, leave the rental unit 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.

In assessing the likely hood of the door being damaged by either force or wear and tear, I disregard the opinion of the technician from the company that originally supplied the door as this evidence is self-serving and therefore not credible. While I find the contractors opinions to be

more credible, I find that the Tenant's research to be the most persuasive evidence given the detailing of the door on construction and wear and tear and comparing this detail with the photos. I find therefore on a balance of probabilities that the Landlord has failed to substantiate that the Tenants caused the damage to the door. I also consider that the Landlord only obtained one estimate for the costs to replace the door thereby failing to take reasonable steps to mitigate the replacement costs claimed. For these reasons, I dismiss the Landlords claim in relation to the door.

As the Tenant has not disputed the claim in relation to the sink, I find that the Landlord is entitled to **\$193.89**. I decline to award recovery of the filing fee given the limited success of the application. Deducting the entitlement from the security deposit of \$800.00 plus zero interest leaves \$606.11 owed by the Landlord to the Tenants. I order the Landlord to return this amount to the Tenants forthwith.

Conclusion

I Order the Landlord to retain the amount of **\$193.89** from the security deposit plus interest in the amount of \$800.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$606.11**. 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: December 18, 2014

Residential Tenancy Branch

