



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting her to retain the security deposit and a cross-application by the tenant for a monetary order and an order compelling the landlord to return the security deposit. Both parties were represented at the conference call hearing and gave their testimony under solemn affirmation.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Should the landlord be compelled to return the security deposit?

Background, Evidence and Analysis

The parties agreed that the tenancy originally began on February 15, 2012 and was set to run for a fixed term of one year, after which the tenant was obligated to move out. At the end of the fixed term, the parties chose to enter into another fixed term tenancy which was set to run until May 31, 2014 at which time the tenant was obligated to move out. The parties chose to enter into a third fixed term tenancy for one month. In 2012, the tenant paid a security deposit of \$1,000.00 and a pet deposit of \$1,000.00. She paid an additional security deposit of \$50.00 in 2013 and on May 9, 2014 she paid yet another additional security deposit of \$350.00.

The tenant claimed that at the beginning of the tenancy, the parties did not complete a move-in inspection. She claimed that at the end of the tenancy, the landlord's agent filled out both the move-in and the move-out sides of the condition inspection form and said that she signed acknowledging the condition of the unit at the time of move-in because the landlord told her she had to or he would take her to arbitration. She also complained that the landlord did not send her a copy of the move-in inspection at the beginning of the tenancy, although she claimed that it had not been performed at that time. The landlord's agent testified that it is the landlord's practice to complete inspections upon move-in and move-out and that copies of the inspection are always provided to the tenants. I am not persuaded that the parties did not complete a move-in inspection at the beginning of the tenancy. The tenant's testimony on this issue is

inconsistent as she claimed that an inspection was not performed at the outset of the tenancy but then complained that a copy of the inspection report was not sent to her at the beginning of the tenancy. Further, I do not accept that she would not understand the impact of signing a document stating that a move-in inspection was performed if this was not in fact true. This inconsistency has led me to find that it is more likely than not that an inspection was performed at the beginning of the tenancy. I further find it likely that the landlord gave her a copy of the inspection at the outset of the tenancy.

I address the parties' claims and my findings around each as follows:

Landlord's Claims

1. **Cleaning.** The landlord seeks to recover \$231.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord claimed that the rental unit was not adequately cleaned, particularly the oven, refrigerator and countertop, and that because this is a high end apartment, there is an elevated expectation that the rental unit will be left in extraordinarily clean condition. The tenant provided invoices showing that she hired a professional carpet cleaner and a professional house cleaner to clean the unit. The landlord questioned why the cleaning invoice was dated in August to which the tenant did not respond. I do not believe that the date of the cleaning invoice is an issue as it is common practice for invoices to be rendered well after the actual work is performed. Section 37(2) of the Act requires tenants to leave a rental unit reasonably clean. It does not impose a higher standard on those who reside in high end apartments. In order to succeed in this claim, the landlord must prove that the unit was not left reasonably clean. The condition inspection report does not indicate that the unit was unreasonably soiled and the landlord provided no photographs showing the unit in unclean condition. I find that the landlord has failed to prove that the tenant failed to meet her obligation to reasonably clean the rental unit and I therefore dismiss the claim for cleaning.
2. **Painting.** The landlord seeks to recover \$1,680.00 as the cost of repainting the unit at the end of the tenancy. The landlord testified that there were over 100 holes in the wall which the tenant patched and touched up with a paint that did not match the original paint colour. He testified that the tenant failed to sand the areas after having filled them and that it took considerable time to address all of the patched areas upon repainting. The tenant testified that she asked the landlord for the original colour code and therefore just made the match as close as possible. She claimed that when she moved into the unit, there were a number of patches on the walls. The landlord testified that the paint in the rental unit had last been touched up in 2010. Residential Tenancy Policy Guideline #40 identifies the useful life of building elements and lists the useful life of interior paint as 4 years. I find that as the unit had last been touched up and apparently not entirely painted in 2010, the useful life of the paint had largely expired. However, I find that the tenant caused excessive damage to the walls and because the patched holes and failed to sand, the painter had to spend more time preparing the walls than would normally be the case if the walls had been left in reasonable condition. I find that the landlord should recover the cost of that extra labour. The invoice

from the painter is not itemized so I must arbitrarily choose a sum which I find reasonable. I find that an award of \$200.00 will adequately compensate the landlord for the extra labour involved in preparing the walls for painting and I award the landlord that sum.

3. Photographs and registered mail. The landlord seeks to recover \$58.58 as the cost of printing photographs in preparation for this hearing and \$25.11 as the cost of sending documents to the tenant via registered mail. At the hearing, I explained to the landlord that under the Act, the only litigation related expense I am empowered to award is the cost of the filing fee. I therefore dismiss this claim.
4. Time of landlord's agent. The landlord seeks to recover \$410.00 as the value of the time spent by the landlord's agent in meeting trades people at the rental unit and preparing for arbitration. While the landlord can recover the cost of their own labour in performing repairs, I find it unreasonable for the landlord to recover the value of their time traveling to the rental unit and admitting trades people to perform repairs. This effectively doubles the cost of repairs for tenants and is a cost of doing business that the landlord should build into the rent received for the rental unit. I find that the landlord's time as claimed is not recoverable for that reason and because much of the time is a litigation related expense. I therefore dismiss this claim.
5. Filing fee. The landlord seeks to recover the \$50.00 filing fee paid to bring this application. As the landlord has been only minimally successful in this claim, I find that they should recover just a part of the filing fee and I award \$20.00.

Tenant's Claims

1. Security and pet deposits. The tenant seeks to recover the \$2,400.00 security and pet deposits paid over the course of the tenancy. I find that the tenant is entitled to the return of the deposit, although it will be set off against the landlord's award. I award the tenant \$2,400.00.
2. June rent. The tenant seeks to recover the \$2,400.00 in rent paid for the month of June. The tenant claimed that because her rent from 2013-2014 was \$2,050.00 per month and her rent for the month of June 2014 was \$2,400.00, the landlord imposed an illegal rent increase. The tenant did not explain why she should recover all of the rent when she resided in the unit throughout the month of June. The parties entered into a series of fixed term tenancy agreement and at the time she signed the agreement, the tenant was fully aware that she agreed to move out of the unit on the expiry of the fixed term. She claimed that she could not move from the rental unit when the second agreement expired because her daughter's school year had not yet ended, but I find that she surely was aware of the school term when she signed the second agreement the year before and could have chosen not to enter into an agreement which required her to vacate the unit at the end of the

tenancy. I find that the landlord did not impose a rent increase. Rather, the parties entered into a new tenancy each time and therefore they could set the rent at whatever they mutually agreed was fair. I therefore dismiss this claim.

3. Filing fee. The tenant seeks to recover the \$50.00 filing fee paid to bring this application. As the tenant was unsuccessful in her claim for the recovery of rent for June and because the balance of the security and pet deposits would have been awarded to her after having set them off against the landlord's award, I find it was unnecessary for the tenant to file this application. She therefore will bear the cost of the filing fee.

Conclusion

The landlord has been awarded \$220.00 which represents painting charges and part of the filing fee and the tenant has been awarded \$2,400.00 which represents the security deposit. Setting off these awards as against each other leaves a balance of \$2,180.00 payable by the landlord to the tenant. I grant the tenant a monetary order under section 67 for \$2,180.00. This order may be filed in the Small Claims Division of the Provincial 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 04, 2014

Residential Tenancy Branch

