



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord withdrew the claims for water and sewer as these items are included in the rent. It was noted that the Landlord’s monetary claim worksheet total exceeded the total monetary amount claimed. The Landlord was provided opportunity to adjust the monetary worksheet items and claimed amounts at the hearing to reflect the limited total claimed.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on September 1, 2013 on a fixed term to end August 31, 2014.

The tenancy ended on August 31, 2014. Rent of \$1,400.00 was payable monthly and at the outset of the tenancy the Landlord collected \$700.00 as a security deposit and \$150.00 as a fob deposit. The Parties mutually conducted a move-in inspection and completed a condition report on August 18, 2013. On August 3, 2014 the Landlord returned from a two week vacation to find the Tenant's notice to end tenancy for August 31, 2014 on the door. The Tenant's forwarding address was included in the notice. The Landlord gave the Tenant three opportunities to conduct a move-out inspection however the Tenant did not attend. The Landlord found the keys and fob in the unit on August 31, 2014.

The Landlord states that the Tenant left the unit unclean and claims \$450.00 for cleaning the unit. The Landlord states that the Landlord and another person cleaned the 650 square foot unit for 16 hours over two days and that they claim \$50.00 per hour. The Landlord points to the Tenant's previous award as justification for the amount being claimed by the Landlord. I note that the Landlord's written submission indicates that the Landlord felt that the amount awarded to the Tenant for cleaning the unit at move in was excessive. No invoice for this work was provided.

The Landlord states that the Tenant left the unit with damages and that various companies and contractors completed the following repairs but that all were paid by cash with no receipts obtained by the Landlord:

- \$50.00 for pest control costs;
- \$100.00 for cleaning the carpet;
- \$100.00 for flooring t-bar repair; and
- \$100.00 for ceiling lighting repair.

The Landlord states that the Tenant painted a bedroom, hallway and one wall in the living room different colors without the permission of the Landlord. The Landlord states

that a contractor painted the whole house in September 2014 and that the Landlord wrote a cheque for around \$500.00 to this contractor. No invoice or copy of the cheque was provided. The Landlord claims \$612.25

The Landlord states that the Tenant damaged the fridge and claims a portion of the replacement and service costs of \$959.97. The Landlord states that the fridge in the unit was a few years old and that the Tenant never informed them that it was not cooling. The Landlord's written submission indicate that at least one technician informed the Landlord that the fridge was not worth repairing.

The Landlord states that the Tenant failed to provide a full month's notice to end the tenancy and claims lost rental income for September and October 2014. The Landlord states that the unit was advertised immediately on various sites online for September 2014 occupancy at the same rental rate. The Landlord states that they showed the unit to a few prospective tenants in August and September and then rented the unit for November 2014. The Landlord states that they were unable to rent the unit earlier as the unit was unclean and needed a fridge. The Landlord states that it took about a week to clean and make repairs to the unit and that the Landlord started cleaning sometime in September 2014. It is noted in the Landlord's written submission that the fridge was replaced on September 10, 2014.

The Landlord states that when the Tenant signed the tenancy agreement on August 18, 2013 the strata form on rules was not attached. The Landlord states that they obtained a copy from the Strata in September 2014 but the Tenant refused to sign the form. The Landlord states that they were fined \$400.00 from the Strata. The Landlord provided a notice from the strata setting out a landlord's responsibility to provide the Strata with a signed Form K within two weeks of renting a unit. The Landlord also provided an invoice from the strata for \$400.00. It is noted that this invoice does not indicate the reason for this charge and refers to an invoice that was not provided by the Landlord. The Landlord claims \$400.00 for the fine.

Analysis

Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord gave the tenant two opportunities for inspection and the tenant has not participated on either occasion. Based on the undisputed evidence of the Landlord that the Tenant did not attend a move-out inspection despite being given three opportunities, I find that the Landlord has substantiated that the Tenant's right to return of the security deposit is extinguished. As a result I find that the Landlord is entitled to retain the security deposit amount plus zero interest of **\$700.00**.

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 Landlord's evidence that the tenancy agreement did not include the strata form when it was signed by the Tenant and considering that the Landlord provided no evidence that the Tenant orally agreed to sign any further forms or even had knowledge that this form was required to be signed, I find that the Landlord has failed to substantiate that the Tenant breached any part of the tenancy agreement. There is nothing in the Act that requires a tenant to sign any strata form. The Strata fine arose from the failure of the Landlord to ensure that this item was included in the tenancy agreement and not from the failure of the Tenant to sign it after the tenancy agreement was signed. I find therefore that the fine did not arise from the Tenant's actions and I dismiss this claim.

Although I accept the undisputed evidence that the Tenant left the unit unclean and with damages, given the size of the unit and lack of photos, I consider the amount being claimed for cleaning to be excessive and note the Landlord's evidence that the amount

being claimed is equivalent to an amount previously awarded to the Tenant. I also consider that the Landlord provided no invoices from the persons who made the repairs and that the Landlord's evidence of costs paid for painting is less than the claim for the cost of painting. Given these reasons, I find that the Landlord is entitled to a nominal amount of **\$150.00** for the cost of cleaning, **\$200.00** for the cost of painting and I dismiss the claims for the remaining claims for repairs.

Given the Landlord's evidence that the unit was cleaned within two days, considering that there was no evidence such as photos, repair invoices or contractor evidence to support that the unit could not be lived in after the cleaning, considering that the fridge was replaced by September 10, 2014, I find that the Landlord provided insufficient evidence that the Tenant caused the lost rental income claimed for both months and find that the Landlord is entitled only to a nominal amount of **\$350.00**. This amount reflects a loss of the first week of September 2014.

Given the Landlord's evidence that the fridge was a few years old and considering the Landlord's evidence that repair persons told the Landlord that the fridge was not worth the cost of repairing, I find that the Landlord's evidence does not support that the fridge had the value claimed with a new replacement. I dismiss this claim.

The Landlord's total entitlement is \$700.00. Given the limited success of the Landlord, I decline to award recovery of the filing fee. Given the Landlord's entitlement to the retention of the Tenant's security deposit of \$700.00 plus zero interest, I find this covers the amounts awarded.

Based on the Landlord's evidence that the keys and fobs to the unit were returned, I find that the Landlord has no claim to the fob deposit and order the Landlord to return the **\$150.00** fob deposit.

Conclusion

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

I grant the Tenant an order under Section 67 of the Act for **\$150.00**. 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: April 20, 2015

Residential Tenancy Branch

