



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and the three tenants attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord attempted to have two witnesses, "TJ" and "AC," testify on her behalf but both could not be reached during the hearing, despite 3 attempts being made to reach each witness. The tenants called one witness, "KL," to testify on their behalf.

The landlord testified that she served the tenants with her application for dispute resolution hearing notice and first written evidence package on August 30, 2014 and her second written evidence package on February 28, 2015, by way of registered mail (collectively "Application"). The tenants confirmed receipt of the landlord's Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's Application.

The tenants confirmed that they personally served the landlord with their written evidence package on March 19, 2015. The landlord confirmed that she received and reviewed the tenants' written evidence package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2013 and ended on August 15, 2014, pursuant to a mutual agreement to end tenancy. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A security deposit of \$825.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was provided by the landlord with her Application.

The landlord testified that a forwarding address was provided by the tenants in writing on August 15, 2014. The landlord stated that a move-in condition inspection and report were completed in October 2013 and a move-out condition inspection and report were completed on August 15, 2014.

The landlord seeks \$1,070.00 from the tenants for damage and cleaning costs which were incurred at the end of this tenancy. The landlord also seeks to retain the tenants' security deposit in partial satisfaction of the monetary award sought. The landlord seeks to recover the \$50.00 filing fee for her Application.

The landlord claims \$520.00 for painting costs because she says she was required to repaint and touch-up the entire rental unit because of damage caused by the tenants. The landlord stated that the rental unit was painted before the tenants moved in, with the exception of the living room and master bedroom, which the tenants' brother, "JC," was hired to paint. The landlord indicated that JC did a bad job of painting but she still paid him for the work. The landlord also provided colored photographs with her Application and claimed that various marks, streaks, holes, scratches and other damage were caused by the tenants. The landlord testified that she painted the rental unit after the tenants vacated sometime in August or September 2014. The landlord stated that she paid around \$700.00 for this work but that she did not realize that she was required to submit a receipt for this expense. The landlord submitted an estimate in the form of a printout of a text message from AC, indicating that \$520.00 was required for painting and touch-ups. The landlord claimed that she indicated painting had to be done on the move-out condition inspection report, noted that \$520.00 was required for this

painting and that clause 42 of the tenancy agreement, which both parties initialed, indicates that "damaged walls will be repaired and repainted before leaving."

The tenants stated that the landlord did a cheap painting job when they moved in and that there were numerous cracks in the walls at the beginning of this tenancy, such that they could not repaint over these areas. The tenants provided a letter from JC, dated August 14, 2014, indicating that he painted the rental unit at the beginning of the tenancy and that he was not paid for this work. The letter also discusses the numerous cracks in the walls of the rental unit and the difficulty JC had with painting the unit. The tenants confirmed that they disagreed with the landlord's move-out condition inspection report and that they indicated this in the report. The tenants stated that the cost of the painting was added by the landlord after the report was signed by the tenants, without the knowledge or consent of the tenants. The move-out condition inspection report indicates "pending" for painting, which has been crossed out and replaced with the "\$520" cost. The move-in condition inspection report also indicates that there are numerous cracks and holes in the walls. The tenants' witness KL testified that she was present during the move-out condition inspection, that the tenants disagreed with the landlord's condition inspection report, and that the rental unit could not be painted because of the numerous cracks in the walls and other problems with the rental unit.

The landlord claims \$60.00 for having the tenants' items removed from the rental unit, after they vacated. The landlord provided a copy of an invoice from AC for the above amount. The landlord did not provide a receipt but testified that she paid the above amount. The landlord provided photographs of various items which she said were left behind by the tenants. The tenants stated that they removed most of their large items with the exception of a few items they left behind for recycling. The tenants stated that the landlord took photographs of their items before they had vacated the rental unit, so many items were removed when they vacated. During the hearing, the tenants agreed that they were responsible for approximately \$25.00 for the landlord's removal and disposal of their items.

The landlord claims \$100.00 for 6.5 hours of cleaning done by "F." The landlord provided a copy of a receipt, dated August 24, 2014, for the above amount, as well as a written description from F, regarding the cleaning performed. The landlord also claims \$180.00 for 6 hours of cleaning that she performed herself in the rental unit, after the tenants vacated. The landlord stated that she advised the tenants that she would be charging \$30.00 per hour for her own time if she was required to clean the rental unit. The landlord indicated that this cleaning hour rate was based on what she thought her time was worth for cleaning. The landlord provided photographs of areas which she claimed were left dirty by the tenants when they vacated the rental unit. The tenants stated that the rental unit was dirty when they moved in, that the photographs do not demonstrate the landlord's claims that the rental unit was dirty when they vacated and that the landlord is charging double for the same type of cleaning.

The landlord also claims \$210.00 for carpet cleaning by "Company S," which she says had to be completed when the tenants moved out. The landlord stated that the tenants agreed to this cost

in clause 42 of the tenancy agreement and that the tenants agreed to professionally clean the carpets when they moved out, but failed to do so. The landlord provided a document indicating that \$231.00 was the total cost for steam cleaning the carpets. The landlord testified that she paid this entire amount and that she deducted \$21.00 because this cost was for cleaning the landlord's own room. The tenants dispute this amount, stating that the carpets are old and have stains. The tenants included this dispute information in the move-out condition inspection report. The landlord testified that the carpets are approximately 10 years old.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damage to the rental unit and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord did not provide sufficient evidence that she paid \$60.00 total for removing the tenants' items from the rental unit, as she only provided an invoice, not a receipt for this cost. Moreover, AC did not testify at this hearing to confirm whether he was required to remove items for the landlord and the cost of any such removal. At the hearing, the tenants agreed that they are responsible for \$25.00 of the landlord's cost to remove the items they left behind in the rental unit. Accordingly, I find that the landlord is only entitled to \$25.00 for the cost of this removal, as this amount was agreed to by the tenants.

The landlord did not provide sufficient evidence that she paid \$520.00 for the cost of painting and touch-ups in the rental unit. The landlord did not provide a receipt for this cost, despite the fact that she had months to do so, given that she incurred this cost sometime in August or September 2014. The landlord also submitted other additional evidence for this hearing on February 28, 2015, shortly before this hearing. The landlord only submitted an estimate for this cost, by way of a text message which she says was from AC. Moreover, AC did not testify at this hearing to confirm whether he was required to paint and touch-up the rental unit and any such cost for this work. I am not satisfied that the landlord's photographs demonstrate that painting was required, as the photographs show very minor marks and scratches that appear to be from wear and tear. I accept the tenants' and their witness KL's testimony that painting could not be done because of the numerous cracks and holes in the wall which were present upon move-in and indicated in the move-in condition inspection report. I find that the tenants did not agree to the cost of repainting, as there is a dispute to the addition of an amount in the move-out condition inspection report which previously indicated "pending" and no concrete amounts

were given to the tenants by the landlord upon move-out. Accordingly, I dismiss the landlord's claim of \$520.00 for painting.

The landlord claims \$280.00 total for cleaning the rental unit after the tenants vacated. The landlord provided a receipt from F in the amount of \$100.00 for this expense. The landlord stated that the remaining \$180.00 was for her own cost to clean, at a price that she thought was fair. The landlord indicated that cleaning had to be done in the move-out condition inspection report and noted "pending" in the estimate portion of the report. The landlord provided photographs and stated that walls, shelves, surfaces and doors all had to be cleaned. The tenants dispute the entire \$280.00 claimed by the landlord for cleaning. I find that the landlord is only entitled to \$100.00 for her cleaning expenses, as this is the only amount that was verified by a receipt. I dismiss the landlord's remaining claim of \$180.00 for additional cleaning performed by the landlord.

The landlord did not provide sufficient evidence that she paid \$210.00 for the cost of carpet cleaning in the rental unit. The landlord did not provide a receipt for this cost, despite the fact that she had months to do so, given that she incurred this cost sometime in August 2014. The landlord also submitted other additional evidence for this hearing on February 28, 2015, shortly before this hearing. The landlord only submitted an invoice addressed to the landlord, indicating that \$231.00 was due for carpet cleaning. Moreover, a representative from Company S did not testify at this hearing to confirm whether it was required to steam clean the carpets and any such cost for this work. I am not satisfied that the landlord's photographs demonstrate that steam cleaning was required, given the tenants' evidence that the carpets were dirty and stained when they first moved in. The move-in condition inspection report indicates that the carpets are worn and stained. I find that the tenants did not agree to the cost of steam cleaning the carpets, as they disputed this cost in the move-out condition inspection report. The move-out report only indicates "pending" and no concrete amount is given for the cost of any steam cleaning. Accordingly, I dismiss the landlord's claim of \$210.00 for steam cleaning the carpets.

As the landlord was mainly unsuccessful in her Application, she is not entitled to recover the \$50.00 filing fee from the tenants. The landlord must bear her own cost for this filing fee.

The landlord continues to hold the tenants' security deposit of \$825.00. In accordance with the offsetting provisions of section 72 of the Act, I find that the landlord is entitled to retain \$125.00 from the tenants' security deposit in full satisfaction of the monetary award. I order the landlord to return the remaining \$700.00 from the security deposit to the tenants.

Conclusion

I order the landlord to retain \$125.00 from the tenants' security deposit in full satisfaction of this monetary award.

I order the landlord to return the remaining \$700.00 from the tenants' security deposit to the tenants.

The remainder of the landlord's Application in the amount of \$945.00 for damage and loss, is dismissed without leave to reapply.

The landlord's Application to recover the \$50.00 is dismissed without leave to reapply.

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 08, 2015

Residential Tenancy Branch

