



Dispute Resolution Services

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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.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on November 8, 2013 and ended on September 13, 2014. Rent of \$2,800.00 was payable monthly and at the outset of the tenancy the Landlord collected \$1,400.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed the report. The Parties mutually conducted a move-out inspection and the Tenant remedied the only deficiency found during the inspection. No move-out report was completed.

The Landlord states that upon later moving into the unit, the Landlord discovered additional damages. The Landlord states that the Tenants were given the unit in a brand new condition and that the Landlord wanted it returned to the same condition.

The Landlord states that the oven sensor was damaged during the tenancy, that the sensor sent a message to the oven that the door was open and that this resulted in the oven not turning on. The Landlord states that the oven was new in 2012. The Landlord provides a service quote that indicates the damage to the sensor could only have occurred by having left the oven door open. The Landlord states that he has no idea how else this damage could have occurred. The Landlord indicates that the oven had a self-cleaning function and that the Tenant carried out the self-cleaning. The Landlord states that he did not think to check the functioning of the oven at move-out. The Landlord claims \$334.02 for the repair of the stove.

The Tenant states that there was nothing wrong with the oven during the tenancy and that the door to the oven was never left open.

The Landlord states that the Tenant left a bedroom door damaged by the door stop that is attached to the door. The Landlord states that it appears that the door may have been slammed against something causing the hole. The Landlord states that the damage may have occurred during the move out of the Tenant's furniture. The Landlord states that the whole door was replaced and claims the cost of \$303.45.

The Tenant states that the door was never slammed and that the door opened onto a TV stand before it hits the door stop. The Tenant states that this master bedroom door was never closed as it is kept open for the children to access. The Tenant states that this damage was not seen on the move-out inspection and that the unit was empty of furnishings at the time. The Tenant states that the damage could have occurred during the Landlord's move into the unit.

The Landlord states that the Tenant was given permission to paint a room as set out in the addendum of the tenancy agreement. The Landlord states that the Tenant verbally agreed that the paint job would be of professional quality. The Landlord states that the Tenant was not asked about their painting qualifications or experience was not given any instructions on how to paint and that no check of the paint job was carried out by the Landlord after the Tenant completed the painting. The Landlord states that the Tenant painted the room at no cost to the Landlord and that the Tenant did a bad job leaving paint marks on the ceiling and baseboards. The Landlord states that the ceiling has to be repainted with several coats of paint due to the

dark color marks. The Landlord states that the ceiling paint could not be touched up given the texture of the ceiling. The Landlord claims the cost of painting the ceiling in the amount of \$598.50.

The Tenant states that the trim marks on the ceiling and baseboards were minimal and questions the amount of costs claimed as excessive. The Tenant states that if the Landlord was not satisfied with the job the Landlord should have told the Tenants and given them the opportunity to make repairs themselves. The Tenant states that the Landlord knew they were going to paint the room themselves and that the Landlord never said anything about painting to a professional standard.

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.

The written agreement to paint the room does not include any standard to be met. Given the undisputed evidence that no questions were asked of the Tenants of their skill or ability to paint the wall, I find it more likely that there was no oral agreement for a professional standard. The Landlord did not take any steps to check on the quality of the paint job during the tenancy or at the time during the move out inspection thereby not providing an opportunity for the Tenant to make repairs. I find that the Landlord failed to take reasonable steps to mitigate any losses and I therefore dismiss this claim.

Section 21 of the Regulations provides that a duly completed condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Given that the damage to the door was not noted on the move-out report, was not noticed until after the Landlord moved into the unit and considering that the Landlord has no other evidence of

how the door was damaged, I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the Tenant caused the damage to the door. I therefore dismiss this claim.

Given the repair report on the stove and considering that the oven worked before the tenancy, I find that the Landlord has substantiated on a balance of probabilities that the Tenant caused the damage to the oven. Given the invoice setting out the costs of the work completed I find that the Landlord has substantiated its entitlement to **\$334.02**.

Deducting this amount from the security deposit plus zero interest leaves **\$1,065.98** remaining. I order the Landlord to return this amount to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$334.02 from the security deposit plus interest of \$1,400.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,065.98**. 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: May 08, 2015

Residential Tenancy Branch

