



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, 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 unpaid rent or utilities - Section 67;
2. A Monetary Order for damages to the unit – Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant 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 tenancy started on July 1, 2013 and ended on May 1, 2014. Rent of \$1,500.00 was payable monthly. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Landlord returned the security deposit to the Tenants at the end of May 2014. The Tenant does not dispute owing the Landlord **\$40.18** for utilities.

The Landlord states that the Tenants failed to leave the unit clean and with damages.

The Landlord states that the floors, windows, carpets, bathroom fixtures, and appliances

required cleaning. The Landlord states that the Tenant left the unit with holes above the doorways and windows paned and that one wall had a couple of holes the size of quarters. The Landlord states that it took them a total of 34 hours to both the clean the unit and make repairs. The Landlord claims \$780.00, out of which \$100.00 is for carpet cleaning, and provided photos.

The Tenant states that the unit was completely cleaned including the appliances and carpet. The Tenant states that one area of the fridge could not be cleaned as the trays in that area could not be removed. The Tenant states that the carpet was cleaned with carpet powder and then vacuumed.

The Landlord states that the Tenant allowed their cat into the crawlspace accessible only through the laundry room and that there was a large amount of feces left under the crawlspace at the end of the tenancy. The Landlord states that in order to get into all areas of the crawlspace a section of another room's floor had to be cut out. The Landlord states that despite cleaning the smell is still present. The Landlord states that the Tenants were told at the outset of the tenancy to keep the door to the laundry room closed and that the Landlord had to keep it closed while the Landlords lived in the unit to keep their own cats out. The Landlord claims \$440.00 for their 22 hours of labour. The Tenant states that at no time did the Landlord tell the Tenants to9 keep the laundry door closed and that shortly after the tenancy started the Tenants closed up the crawlspace in the laundry as they had a suspicions that the cat might get into the area. The Tenant states that the unit had a bad smell in that area at move-in and that the Landlords had allowed a neighbour cat in and around the house that sprayed. The Landlord states that the neighbour's cat could not have left any smell as it had a bent urethra that did not allow it to spray. The Tenant states that their cat only used a litter box and did not even defecate outdoors.

The Landlord states that the addendum to the tenancy agreement requires the tenant to maintain the lawn and garden. This term states that "the gardens and the lawn must be watered when necessary and the yard kept in a neat and tidy manner." The Landlord

states that the gardens were pristine at move-in and that at move-out only the lawn was mowed. The Landlord states that the garden is made up of mostly perennial flowers and shrubs contained weeds and grass. The Landlord states that it took their previously regular gardeners 4 days of work over a month to clean up the area. The Landlord claims \$400.00. The Tenant states that the lawns and gardens were maintained as they were at move-in and that the garden area is an "English garden" type. The Tenant states that the photos of the garden done after the gardeners work show a more severe arrangement of the garden than was present at move-in. The Tenant states that the spring clean-up of the centre portion of the garden was left for during April given the amount of rain and as the Tenants were shortly moving. The Tenant states that they were reluctant to prune. The Tenant states that the lawns and gardens were watered and maintained during the tenancy.

The Landlord states that they called the Tenant several times to offer the chance to return and complete the cleaning however they did not return any calls. The Tenant states that no calls were received from the Landlords who only returned on May 7 and that the Landlord sent the email the next day which was the day before the Landlord's gardeners started the work being claimed.

The Landlord claims costs for photographs, registered mail, photocopying and the filing fee.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and 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.

I accept the Tenant's evidence that the lawns were watered and mowed during the tenancy meeting the requirements of both the tenancy agreement and the Act. Given the lack of a move-in condition report, considering the Tenant's evidence of the state of the garden at move-in, I find on a balance of probabilities that the Landlord has failed to provide sufficient evidence that the Tenant failed in its obligations to maintain the lawn and garden. I also note that a "pristine" condition is not equal to the standard to be met under the Act which requires a reasonable standard. As such I dismiss the Landlord's claim for costs for gardening.

Given the Tenant's evidence of cleaning the carpet with a powder, I find that the Landlord would have had to further steam clean the carpets to bring it to a reasonably clean state. As the Landlord has set out separately the amount claimed for the carpet cleaning and it is a reasonable cost I find that the Landlord has substantiated an entitlement to **\$100.00**. Based on the photos I find that the Landlord has substantiated some damage to the walls from nail holes. The Landlord did not set the repairs hours apart from the cleaning hours the total of which I consider excessive as the Landlord's photos only show minor deficiencies in cleaning. Considering as well the Tenant's evidence of cleaning of the unit I find that the Landlord has only substantiated a nominal amount of **\$200.00** for the cleaning and repairs to the unit.

Given the undisputed evidence that the Landlord previously had cats in the unit and considering the Landlord's evidence that the Tenants were told to keep the area closed off, I find it likely that the Landlord had its own experience with cats entering and using the crawlspace for some time prior to the tenancy. Accepting the Tenant's evidence that they closed up this area shortly after the start of the tenancy, I find that the Tenant's cat likely left deposits as well for a short period of time. As a result I find on a balance of probabilities that the Landlord has substantiated that the Tenant only contributed to

the accumulation of feces and is therefore only entitled to a nominal amount of **\$100.00** for that contribution.

Based on the Tenant's undisputed evidence of liability for the utilities, I find that the Landlord has substantiated its claim to **\$40.38**. As the Act does not provide for a party to claim costs of the dispute process other than the filing fee, I dismiss the Landlord's claims for mail, photo and photocopying costs. As the Landlord's application has had merit beyond the undisputed utility costs, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$530.56**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for the amount of **\$530.56**. 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 22, 2015

Residential Tenancy Branch

