



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

The Landlords 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 undisputed facts: The tenancy started on August 1, 2013 and ended on September 30, 2014. Rent of \$1,300.00 was payable monthly and at the outset of the tenancy the Landlord collected \$650.00 as a security deposit. The Parties mutually conducted a move-in inspection. The Parties mutually conducted a move-out inspection on September 30, 2015 and then met on October 7, 2015 to finalize the report but the Tenant did not agree with the damages reported and did not sign the report. The Tenant provided its forwarding address to the Landlord in writing on October 1, 2015 and by registered mail. The Tenant gave their notice to end the tenancy on September 22, 2015 as the Tenants found a more suitable rental unit. The Tenant owes the Landlord **\$5.90** for damages to a vent and switch.

The Landlord states that the unit was immediately advertised on several online sites following the provision of the Tenant's notice, an open house was held on September 28, 2015 with three interested persons and the only good prospective tenant at that open house could not rent the unit until November 1, 2015. The Landlord states that they immediately agreed to the November 2015 occupancy for this tenant. The Landlord claims unpaid rent for October 2015 due to the Tenant's insufficient notice.

The Tenant understands that the Landlord's application to claim rent for October 2015 was for either unpaid rent or lost rental income and that the Tenant did not make any distinction in her understanding between the two different claims. The Tenant states that rentals in their city were in high demand and units went quickly so when they found a more suitable rental unit they decided to take it immediately. The Tenant states that they made this decision initially accepting that they would pay for October 2015 rent or a portion thereof if new tenants could not be found for any portion of that month. The Tenant states however that on their move-out day damages were noted on a bathroom wall, the Landlord was immediately informed and it was determined that a leaking pipe and mold was present. The Tenant states that no repairs were made to the unit before September 30, 2015. The Tenant states that the Landlord informed them on September 30, 2014 that they would not be renting the unit until it was repaired and that it was expected to take a month or two for completion. The Tenant states that their short notice did not cause any loss for the Landlord as the unit would have had to be empty for October 2015 due to the leak and mold damages.

The Landlord states that the Tenants should have noticed the damages sooner. The Landlord agrees that he told the Tenants he would not rent the unit until it was repaired however repairs enabled liveable occupancy within a few days of the start of October 2014. The Landlord states that repairs to a kitchen, bedroom and bathroom floor were not completed for a few more weeks. The Landlord confirms that these areas were not usable during the repairs that took place in October 2014. The Landlord states that the work on the basement was being done in November 2014 and that the new tenants were aware that such work would be done. The Tenant states that the entire basement was not useable.

The Landlord states that the Tenants left a window screen damaged and claims \$86.00. The Landlord states that it has not been replaced as it is not a financial priority. The Landlord states

that an estimate for the cost was provided by the restoration company. No copy of that estimate was provided. The Tenant states that a cable from a satellite ran through the screen and was removed by the cable person leaving a hole. The Tenant states that she received this information from her son and that she has no other knowledge of how the damage occurred.

The Landlord states that the tenancy agreement restricts smoking and that the Tenants smoked in the garage leaving damages to the paint and smells. The Landlord provides a letter from a painting company setting out that the garage had a heavy tobacco smell and indicating the work required to repair. The Landlord also provides a letter in relation to the smoke smell from the Landlord's daughter and the new tenant. It is noted that the new tenant's letter sets out that the tenants smelled smoke at move in but "couldn't afford to repaint it". The Landlord states that the new tenants were not given any rent reduction for the claimed damages to the garage and that the Landlord instead agreed to an extra adult occupant for the tenancy. The Landlord states that the garage repairs have not been done due to a lack of money. The Landlord claims \$2,785.29 for the costs to repair the garage.

The Tenant states that their children have allergies and that they never smoked in the house or the garage. The Tenant states that they always smoked outside in a specially set up area. The Tenant provided several witness letters from other tenants, occupants and visitors stating that no smoking occurred and no smell of smoke was present in the garage during the tenancy.

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 costs for the damage or loss have been incurred or established.

The Landlord provided a letter from a company who would stand to benefit by agreeing that the garage smelled of smoke. I do not see this supporting evidence as holding much weight. The Tenant has provided witness letters from tenants in the basement suite and from guests to the unit that indicate no smoking occurred in the garage. I find this evidence to be persuasive along with the Tenant's own evidence. The Landlord has provided a letter from the new tenants

indicating a smell of smoke in the garage however this letter also suggests that the new tenants were to paint it themselves. It is clear that the Landlord did not give the new tenants any rent reduction for a strong smell in the garage thereby leading to a loss for the Landlord and the Landlord has clearly not incurred any costs to repaint the garage to date. Given the Landlord's evidence of an agreement with the new tenant to take the garage as is in exchange for accepting an additional occupant, I consider that the Landlords have not provided sufficient evidence to support a likely future expenditure. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenants damaged the garage with smoke or that costs were or will be incurred and I dismiss the claim for damages to the garage.

I consider the Tenant's evidence of how the screen was damaged to be tentative and I accept that it is likely that the Tenants did damage the screen however the Landlord has not replaced the screen nor provide a written estimate. As a result, I find that the Landlord has only substantiated a nominal entitlement of **\$25.00**.

When a tenancy ends, rent is no longer payable. Although the Landlord did not specifically claim lost rental income, given the Tenant's understating that the claim was for October 2015 rent regardless of a distinction between unpaid rent and lost rental income, I find that I may treat the Landlord's claim for unpaid rent as a claim for lost rental income. Given the Landlord's evidence of advertising, I find that the Landlord acted reasonably to mitigate losses for October 2015 rent. However given the Landlord's evidence of repairs to the unit I find that significant areas of the unit were not useable for the month of October 2015, that ongoing repairs during the unit's occupation would also lead to a loss of quiet enjoyment of the unit and that this loss of use was not caused by the Tenant's short notice. For these reasons, I find that the Landlord has only substantiated a nominal entitlement of **\$300.00** for lost rental income due to the Tenant's failure to provide the required notice.

The Landlord entitlement for the rent, screen, vent and switch amounts to **\$330.90**. As the Landlord's application has met with minimal success, I decline to award recovery of the filing fee. Deducting \$330.90 from the security deposit of **\$650.00** plus zero interest leaves **\$319.10** owed to the Tenant. I order the Landlord to return this amount to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$330.90** from the security deposit plus interest of \$600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$319.10**. 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

