



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 damages to the unit - Section 67;
2. A Monetary Order for compensation - 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 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 February 28, 2013 and ended October 20, 2014. Rent of \$850.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed a condition report on February 28, 2013. The Landlord provided a copy of that report.

The Landlord states that no keys to the unit were returned. The Landlord states that on October 9, 2014 the Tenant informed the Landlord about moving out. The Landlord states that a move-

out inspection was offered for the end of the month but the Tenant stated that he was leaving and refused to attend. The Landlord states that a second opportunity was offered by email a few days later and the Tenant said "sorry".

The Tenant states that the Landlord was told his parents would conduct the move-out inspection and that they arranged to conduct the inspection on October 24, 2014. The Tenant states that on that date the Tenant's parents found that the Landlord had already started working in the unit and had placed the Tenant's belongings on the lawn. The Landlord provided a copy of an email from the Tenant dated November 29, 2015 in which the Tenant refers to the belongings left in the rain. The Landlord provided a copy of an email dated October 19, 2014 to the Tenant asking the Tenant to have the parent contact him to "pick up your bed etc.". The Landlord provided a copy of an email to the Tenant dated October 20, 2014 referring to the state of the walls but no mention of any inspection. The Tenant states that the parents did inspect the unit with the Landlord but no form was completed. The Landlord states that he was never contacted by the parents so the Landlord did an inspection and completed the form. The Landlord states that a copy of this form was not provided to the Tenant as there was nobody to sign on behalf of the Tenant.

The Landlord states that the Tenant left the bathroom without a stopper and drain and that the caulking was black so the Landlord replaced items and repaired the bathroom. The Landlord claims \$7.00 for the cost of supplies. The Tenant states that there was never a stopper or a drain and that the Tenant did not notice any problem with the caulking during the tenancy although it was noted to be old.

The Landlord states that the carpets were not cleaned by the Tenant and claims \$168.00 for the cost of cleaning. The Tenant does not deny that the carpets were not cleaned as his parents were not able to finish the cleaning due to the Landlord's work at the unit. The Landlord states that the Tenant was notified that the carpets would be cleaned and that this was done on October 18, 2014 before the Tenant moved out. The Landlord provided a receipt for the carpet cleaning and it is noted that the invoice indicates that the cleaners were booked on October 18 and the job was completed on October 20, 2014. The Tenant states that the Landlord did tell the Tenant that the Landlord was bringing cleaners in but no carpets were cleaned before he left.

The Landlord states that he did not start on any other work until about a week before the end of October 2014. The Landlord states that he started the work on the unit as he wanted to show the unit and rent it for the following month. The Tenant states that rent was paid to the end of October 2014 and that the Tenant had to that date to clean the unit. The Tenant states that the parents were planning on finishing the cleaning but that it was already done by the Landlord by October 24 or 25, 2014. The Tenant states that the Landlord never entered the unit while the Tenant was present. The Landlord states that he was not aware that the parents would be attending to clean the unit. The Landlord states that he only knew that a truck was present on October 24, 2014 and that when the persons were questioned about what they were doing the Landlord was told that it was none of his business. The Landlord states that the unit was cleaned after October 24, 2014.

The Landlord states that all the walls of the unit were damaged from smoke and required washing with a special cleaner and then painting. The Landlord states that the tenancy agreement prohibits smoking in the unit. The Landlord claims \$212.00 for the cost of the paint and supplies and \$800 for 40 hours of labour at \$20.00 per hour. The Tenant states that he only smoked inside the unit for the last couple of weeks of the tenancy and that no walls were stained.

Analysis

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

Given the move-in condition report that indicates the presence of stoppers in the bathroom I find that the Landlord has substantiated on a balance of probabilities that these items required replacement. I find therefore that the Landlord has substantiated its claim for **\$7.00**. Based on the Parties undisputed evidence I find that the Tenant was aware that the Landlord was going to clean the carpet. As there is no evidence that the Tenant did not agree with the Landlord cleaning the carpet and considering the photos and invoice both indicate soiled carpets, I find that the Landlord has substantiated that the Tenant knew the carpet would require cleaning and

at least acquiesced to the cleaning being done by the Landlord. As such I find that the Landlord has substantiated its costs of **\$168.00** for the cleaning of the carpets.

Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has offered 2 opportunities for inspection and the tenant has not participated on either occasion.

Noting the Landlord's email evidence between himself and the Tenant, I find that the Landlord was aware that the Tenant's parents would be collecting the last of the Tenant's belongings. This supports the Tenant's credible evidence of the parents' attendance on October 24, 2015 and of the parents' expectation to finish the cleaning on that date and of the expectation of a move-out inspection after or on this date. I also consider that the evidence supports on a balance of probabilities that the Landlord was either finished cleaning or in the process of cleaning the unit on or before October 24, 2015. Although the Landlord's evidence is that the Tenant refused all offers for a move-out inspection I consider that there is no supporting evidence of such offers. I find therefore that the Landlord has failed to substantiate on a balance of probabilities that the Tenant refused to attend a move-out inspection after two offers and that the Tenant's right to return of the security deposit was extinguished.

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 reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed.

Based on the undisputed evidence that the Landlord started to make repairs and to clean the unit prior to the end of the tenancy and accepting that the Tenant's belonging remained in the unit and were to be collected by the Tenant's parents before the end of the month, I find that the Landlord interfered with the Tenant's obligations and rights in relation to exclusive possession of the unit to the end of the tenancy and leaving the unit reasonably clean and undamaged.

Noting that the Landlord knew the state of the walls by October 20, 2014, that no mention was

made of the Tenant's obligation to clean the unit before the end of the tenancy and that the Landlord completed the cleaning before the end of the tenancy, I also find that the Landlord failed to take reasonable measures to mitigate its losses incurred for the cleaning. I therefore dismiss the claim for the cleaning and repair of the walls.

As the Landlord has had minimal success with its application I decline to award recovery of the filing fee. Deducting the Landlord's total entitlement of **\$175.00** from the security deposit of **\$425.00** plus zero interest leaves **\$250.00** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of **\$175.00** from the security deposit plus interest of \$425.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$250.00**. 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: July 10, 2015

Residential Tenancy Branch

