



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC

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 compensation - Section 67; and
3. A Monetary Order for damages to the unit – Section 67.

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

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 1, 2013 and ended on December 1, 2014. Rent of \$1,600.00 was payable monthly. At the outset of the tenancy the Landlord collected \$800.00 as a pet deposit. The Parties mutually conducted a move-in inspection and the Landlord completed the condition report.

The Landlord states that a move-out inspection was attempted but that the Tenant left the unit before the inspection was completed due to a disagreement about the cause of mold in the unit. The Landlord states that the inspection report was completed and signed by the Landlord but no copy was provided to the Tenant. No copy of a move-out report is provided as evidence. The Landlord’s Witness states that he attended with the

Landlord on a move-out walk through with the Tenants but did not see any condition inspection report. The Witness states that while the unit was clean the rugs were in "rough condition", and that some mold was present in the top corner of the bedroom. The Witness states that the window sills were warped and that condensation was not present. The Witness states that he was present on a later date when the Landlord had the dishwasher replaced.

The Landlord states that the Tenants damaged the dishwasher as it was found with an irreplaceable screw missing from the top rack. The Landlord states that it would cost more to repair the machine than to purchase another dishwasher. The Landlord states that a new dishwasher was purchased and claims the costs of \$557.88 plus labour costs of \$83.33. The Landor states that the dishwasher was approximately 8 years old as it was original to the building that was completed in 2006. The Tenant states that when the screw came out the Landlord was informed immediately. The Tenant states that the Landlord did not bring in any repair person and that the Landlord only attempted to repair the machine himself. The Tenant states that the screw was left for the Landlord and that the building and dishwasher was about 10 years old.

The Landlord states that when the plumber attended the unit after the end of the tenancy to install the dishwasher a leak was discovered from the garburator that appeared to have been punctured by a sharp utensil. The Landlord states that the garburator could not be repaired and had to be replaced. The Landlord states that the garburator was original to the unit. The Landlord claims \$283.34 plus \$83.33 in labour costs.

The Tenant states that they completed the walkthrough of the unit at move-out and that although the garburator was not inspected it was working. The Tenant states that no leakage was ever seen by the Tenants and that it would have been obvious as it would have leaked into the garbage container that was placed under the garburator. The Tenant states that no cutlery was missing and no loud noise was ever heard from the garburator.

The Landlord states that the Tenants left the carpet unclean and that if they were cleaned the job was poorly done. The Landlord claims \$114.45 for the carpet cleaning cost. The Tenant states that they hired a professional cleaner to clean the unit and believed this cleaner would have cleaned the carpet. The Tenant states that the carpet was not cleaned by the Tenants themselves.

The Landlord states that the Tenants caused mold to appear in the unit by not following the Landlord's instructions for reducing the humidity. The Landlord states that the windows are susceptible to condensation and that while a few other units in the building have also been found to have this same problem, the cause is likely the lifestyle of the occupants of these units. The Landlord states that this was a known issue at move-in and that the Tenants were given both verbal and email instructions on caring for these issues. The Landlord states that one of the fans that operated for 2 hours each day and that was not located in a room with mold had been disabled.

The Tenant states that they did not cause the mold to appear and are not responsible for its spreading. The Tenant states that the switch for the fan looked disabled but that the condensation occurred in a different room, the main living area. The Tenant provided an undated letter from the building manager indicating window condensation problems with over 30 units and that the Strata is in the "process of litigation with the developer's underwriters". The Landlord states that the letter is completely false, that an engineer was hired to inspect the units and that this report has yet to be completed. The Parties do not dispute that condensation has been an issue for several years and that notices about this problem are posted in the building. The Landlord states that the amount of costs is still to be determined. The Landlord claims this undetermined amount.

The Landlord states that the Tenant gave a late notice to end tenancy by email on November 4, 2014. The Landlord states that the unit was not subsequently advertised for rent as the Landlord listed the unit for sale. The Landlord claims lost rental income

for January 2015. The Tenant states that the Landlord was given a texted notice to end the tenancy on November 1, 2014 and that on November 3, 2014 the Landlord sent a message to Strata that shows the Landlord knew of the end of the tenancy.

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.

RTB Policy Guideline #40 sets out the useful life of building elements and indicates that the useful life of a dishwasher is 10 years. As there is no evidence that the Tenant acted in any way to damage the dishwasher or was negligent in the use of the dishwasher and considering that the dishwasher was close to 10 years old, I find it more likely that the screw fell out of the dishwasher from normal wear and tear. As the Tenant is not liable for reasonable wear and tear I find that the Landlord has failed on a balance of probabilities to establish that the Tenant caused the dishwasher to be replaced. I therefore dismiss this claim.

Given the evidence that a utensil appears to have punctured the garburator, I find that the Landlord has on a balance of probabilities shown that the Tenant negligently caused the garburator to be damaged. However given the age of the garburator at nearly 10 years, I find that the Landlord has only substantiated a depreciated loss of **\$40.00**. This represents approximately 10% of the replacement cost and value that was likely remaining in the life of the garburator.

Given the Witness evidence of the Landlord and considering that the Tenant did not know if their cleaner cleaned the carpet, I find that the Landlord has substantiated on a balance of probabilities that the Tenant did not leave the carpets reasonably clean at the end of the tenancy. The Landlord is therefore entitled to the costs claimed of **\$114.45.**

Given the evidence of mold being present in other units for quite some time and considering in particular the letter from the building manager I find that the Landlord has not substantiated that the Tenant caused or contributed to the mold in the unit and I dismiss these claims of the Landlord in relation to the mold.

Although the Tenant did not provide a full month notice in writing to the Landlord of the end of the tenancy that in itself does not create a monetary entitlement. The Landlord must show that the Tenant's lack of the notice caused the loss claimed. As the Landlord did not seek to rent the unit out after the end of the tenancy, the Landlord did not lose any rental income. I find therefore that the Landlord has not shown that the Tenant caused any loss of rental income. I therefore dismiss this claim.

Section 36 of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Although the Landlord claims the Tenant did not participate in the move out inspection, given the evidence of both the Tenant and the Landlord's Witness I find on a balance of probabilities that the Tenant did participate in the inspection. Although the Landlord states that a move-out condition report was completed by the Landlord, given the lack of a copy to the Tenant, I find that the Landlord's right to claim against the security deposit was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's right to claim against the security deposit was extinguished the only option for the Landlord was to return the full amount of the security deposit within 15 days of the end of the tenancy and continue with its claims against the Tenant. As the Landlord failed to return the security deposit, I find that the Landlord must now pay the Tenant **\$1,600.00**. This amount represents double the original security deposit of \$800.00 plus zero interest.

As the Landlord's application has had little merit, I decline to award recovery of the filing fee. Deducting the entitlement of **\$154.45** from the Tenant's security deposit entitlement **\$1,600.00** plus zero interests leaves **\$1,445.55** to be returned to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,445.55**. 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: August 7, 2015

Residential Tenancy Branch

