



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF
 MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The parties both attended the hearing and the landlord was accompanied by a witness who was also introduced as a co-owner of the rental unit. The parties and the witness each gave affirmed testimony and the parties were given the opportunity to question each other and the witness about the evidence and the testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for the costs for serving documents, and recovery of costs for repairs made by the tenant?

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord's witness testified first in order to be able to represent the landlord. He testified that this fixed term tenancy began on November 1, 2013 and was to expire on November 30, 2014. The tenancy agreement, a copy of which has been provided specifies that at the end of the fixed term the tenant must move out of the rental unit, however the tenant didn't move out until February 28, 2015. The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on January 26, 2015 with an effective date of vacancy of February 28, 2015 and the tenant moved out in accordance with that notice.

Rent in the amount of \$1,000.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The witness further testified that a move-in condition inspection report was completed at the beginning of the tenancy with the tenant, however at the end of the tenancy the tenant refused to participate in a move-out condition inspection after being provided with 2 opportunities to do so, and the witness completed the report in the absence of the tenant. Copies of the reports have been provided.

The Addendum to the tenancy agreement specifies that the tenant is not permitted to make any alterations, including painting the walls, or making any holes in walls without the landlord's written consent. The tenant changed the paint color in every room except the bathroom during the tenancy from a tan color to blue and left numerous deficiencies, such as paint on trim, receptacle covers and the thermostat. Also left were patches of a lighter shade. The tenant did not have written consent of the landlord and the witness told the landlord he was not permitted to change the color. The parties had several conversations and the witness eventually agreed to pay for the cost of paint in order to resolve the harassment of the tenant. The landlord hired a painter after the tenancy ended at a cost of \$1,515.15 and has provided a copy of an invoice for that amount dated May 30, 2015.

Further, the tenancy states that professional steam cleaning of carpets is required immediately prior to vacating the rental unit and the tenant is required to submit a

receipt as proof to the landlord. The tenant did not do so and the landlord hired a professional cleaner. The landlord claims \$150.00 but has not provided evidence of that cost.

The landlord also claims loss of revenue for the tenant's failure to comply with the tenancy agreement. The landlord tried to re-rent the rental unit for a month but was not successful due to the condition left by the tenant. Three quotes were obtained from painters which took some time. The painting was done in May, 2015 and once completed the landlord was able to re-rent. The new tenant could not move into the rental unit until July 1, 2015, however the landlord claims \$1,000.00 for each of the months of March and April.

The witness further testified that the tenant left the stove and sink dirty and has provided photographs. A cleaner charges \$25.00, and the witness did the cleaning and the landlord claims one hour, or \$25.00.

The landlord testified that the tenant was very aggressive, which is why the landlord and witness agreed to pay the tenant for some paint.

The parties had been to a previous arbitration on January 20, 2015 concerning a claim made by the tenant about leaking water from renovations taking place in the upper unit. The tenant was successful in obtaining a monetary order for loss of use of the entire rental unit as well as a repair order.

The tenant testified that the landlord advised that the security deposit was retained because the tenant damaged some walls by doing some painting. The tenant has provided some digital photographs and testified that they illustrate holes in walls and the ceiling as well as a bunch of spider webs on ceilings and walls. When the tenancy agreement was signed, the landlord said he'd paint and clean, but the day of move-in the tenant and spouse were totally disappointed. The house was in an unhealthy condition and the tenant's wife was pregnant. The tenant called the landlord who advised he was going on vacation and asked the tenant to paint. The tenant told the landlord he was not a professional painter but said that he'd do his best. The landlord didn't specify what colors to use so the tenant picked a light color. Holes had to be filled in the ceiling and walls, and the job took more than 2 weeks to finish. The landlord attended to see the job when the landlord returned from vacation and said it looked great and he liked the color and agreed to pay for the paint.

The tenant also testified that he had no choice but to paint because he needed a clean home. The landlord only paid the tenant half of the actual cost of paint and supplies stating that he was going to keep the other half to make the tenants stay for 3 years and

then would pay the balance. The total cost was \$340.00 and the landlord gave the tenant \$170.00.

The tenant further testified that the tenants were not present for the move-in condition inspection. They found the report under the kitchen counter already filled out. Comments were added to the report later by the tenant, the landlord agreed, and the parties signed it. The tenant agrees that it was then accurate, but stated that the parties agreed to the house being painted and repairs and does not know why he didn't add it to the report.

The tenant also claims from the landlord:

- \$11.34 for the cost of serving documents by registered mail to the landlord;
- \$50.00 filing fee for the cost of this application;
- \$13.60 to send further documents by registered mail;
- \$6.99 for a door guard the tenant purchased and installed in the rental unit;
- \$1,000.00 for double the amount of the security deposit;
- \$170.00 for the other half of painting costs;
- \$1,000.00 for the tenants' time cleaning and completing repairs and painting;
- \$1,720.00 for the landlord's failure to comply with the previous Decision of the director, and for harassment by the landlord toward the tenant and family for a month.

The parties have also provided copies of numerous emails exchanged.

Analysis

Res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties after a final judgment had been issued on the merits of the case. I indicated to the parties that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have reviewed the previous Decision referred to by the parties and find that the tenant's application was for repairs, emergency repairs and for a monetary order for loss of quiet enjoyment and disinfecting the house after a sewer leak. The application by the tenant before me seeks, in part, monetary compensation for the landlord's failure to comply with the Decision of the previous Arbitrator, and for harassment. The landlord also claims that the tenant harassed the landlord and the witness. In the circumstances, I find no evidence that satisfies me that either party should be entitled to monetary compensation for harassment, and the tenant's claim for \$1,725.00 is dismissed.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

With respect to the landlord's application, I find that the \$25.00 claim for cleaning has not been established. A tenant is required to leave a rental unit reasonably clean except for normal wear and tear at the end of the tenancy, and leaving a sink and stove unclean when the rest of the unit has been cleaned does not constitute anything beyond reasonably clean and the landlord's claim is dismissed. With respect to carpet cleaning, the landlord has not provided any evidence of the cost to steam clean the carpets, and therefore, I find that the landlord has failed to establish element 3 in the test for damages.

With respect to repainting the rental unit after the tenancy had ended, I have reviewed the emails exchanged by the parties and the tenancy agreement. Although I accept that the landlord permitted the tenant to paint, albeit orally, I also accept that the tenant knew he was to paint it back to the original color. I cannot accept the tenant's testimony that he painted it a lighter color judging from the photographs; spots of a lighter color definitely appear, and I find that the landlord has established a claim for \$1,515.15.

With respect to the landlord's claim of \$2,000.00 for loss of rental revenue, I am satisfied that as a result of the poor paint job, the rental unit could not be re-rented, however I only accept 1 month of loss. The landlord ought to have re-painted right away in order to mitigate any loss suffered, and I grant half of the claim.

With respect to the tenant's application, the *Residential Tenancy Act* provides for recovery of a filing fee, but not for recovery of costs for service or preparation for a hearing, and therefore the tenant's applications for the cost of serving documents by registered mail to the landlord are dismissed. The tenant has not provided any evidence of a need to replace a door guard, or any evidence of the cost of paint, and the tenant's applications for \$6.99 and \$170.00 respectively are hereby dismissed.

With respect to the tenant's application of \$1,000.00 for the tenants' time cleaning and completing repairs and painting, the parties agree that the move-in condition inspection report was completed by the landlord, left for the tenant to see and add to, and then the parties went over it and signed it. Although that method is not sanctioned by the *Act*,

the tenant did sign it, testified that it was accurate and noted that no repairs were required at the beginning of the tenancy. Therefore, I cannot accept the tenant's testimony that the landlord promised to paint or complete any other repairs. The report shows that a number of items, such as walls, ceilings and doors were dirty at the commencement of the tenancy, but there is no evidence before me to satisfy me that his time cleaning those items at the beginning of the tenancy constitutes \$1,000.00, or that painting the rental unit was authorized or required, and the tenant's application is dismissed.

With respect to the security deposit, the regulations to the *Residential Tenancy Act* require a landlord to provide a second opportunity to conduct the move-out condition inspection report in the approved form:

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

The parties exchanged several emails prior to the end of the tenancy and after the tenant had moved out, and scheduling the date for the inspection was the subject of many of them, however the landlord did not propose the final opportunity in the approved form. If the landlord fails to comply with that section, the landlord's right to claim against the security deposit for damages is extinguished, including the claim for loss of rental revenue.

The parties agree that the amount collected by the landlord was \$500.00. The parties also agree that the tenancy ended on February 28, 2015, but neither the landlord nor the landlord's witness provided any testimony of when the tenant's forwarding address was received. The *Act* requires a landlord to repay double the amount if the landlord fails to return the deposit or make an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. The landlord made the application claiming against it on March 13, 2015, clearly within 15 days of the date the tenancy ended, but not having a claim against it for anything other than damages, and having found that the landlord's right to claim against it for damages is extinguished, the

landlord had no option but to return it within the 15 days. No one can tell me when the landlord received the tenant's forwarding address in writing and therefore I cannot find that the tenant is entitled to double.

The landlord currently holds \$500.00 in trust with respect to this tenancy, and having found that the landlord has established a claim for \$1,000.00 for loss of rental revenue and \$1,515.15 for painting, I hereby set off the amounts and I order that the tenant pay to the landlord the difference in the amount of \$2,015.15. Since both parties have been partially successful with the application I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,015.15.

This order is final and binding and may be enforced.

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: September 04, 2015

Residential Tenancy Branch

