



Dispute Resolution Services

Page: 1

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 - 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 following are undisputed facts: The tenancy started on March 1, 2015 for a fixed term to end March 1, 2016. The tenancy ended on June 1, 2015. The tenancy agreement provides that rent of \$1,100.00 is payable each week on the 1st and 15th day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Parties mutually conducted both a move-in and move-out condition inspection but no report was completed by the Landlord. The Tenant never

provided the Landlord with its forwarding address. The Tenant owes \$134.00 for unpaid utilities.

The Landlord states that the rent of \$1,100.00 was all payable on the 1st of each month. The Landlord states that the Tenant failed to pay rent for May and claims \$1,100.00. The Tenant states that half the rent was payable on the 1st and half on the 15th of each month. The Tenant states that he paid the first half of the rent for May 2015 by etransfer and told the Landlord to keep the security deposit for the remaining rent.

The Landlord states that as the Tenant was experiencing some personal hardship the Tenant was given the keys to the unit on February 4, 2015 in order to move his belongings in early. The Landlord states that the Tenant also moved into the unit by February 7, 2015 and that the Parties then agreed that the Tenant would pay half the rent for February in \$100.00 installments over the tenancy. The Landlord claims \$1,100.00 for the month.

The Tenant states that he did talk to the Landlord about personal issues and the Landlord told the Tenant that no extra rent would be payable if the Tenant wished to move in early. The Tenant states that the Landlord left the keys for the Tenant. The Landlord states that additional costs were determined necessary when the Landlord saw the Tenant's five children.

The Landlord states that the Tenant left the unit walls damaged with a few nicks and small picture hanging holes and claims repair costs of \$2,525.00, including repairs to broken baseboards and a transition strip. The Landlord states that the baseboards were discovered broken after the photos were taken so there are no photos of the baseboards. The Landlord has no idea what a transition strip is. The Landlord provided an invoice and photos of baseboards and walls. The Tenant states that the nicks and picture holes were present at the outset of the tenancy. The Tenant states that the transition strip is a strip between the kitchen and hardwood flooring and that it was cracked at move-in.

The Landlord states that the Tenant left garbage behind inside the unit and on the patio and claims the removal costs of \$505.00. The Landlord provided an invoice and receipts from the landfill. The Tenant agrees that items were left and that the Tenant did not want to deal with them.

The Landlord states that the Tenant damaged the back yard lawn by leaving dog feces and by allowing his children to dig up the lawn with their feet. The Landlord states that the lawn had been newly sodded the previous year for \$500.00. The Landlord states that her gardener picked up the feces but could not repair the lawn. The Landlord claims \$500.00 as a loss in the value of the lawn. The Tenant states that the dog was never in the backyard and was taken for walks off the property. The Tenant states that the backyard was on a hill that got muddy when it rained and that the Landlord's children and the Tenant's children would play together on the hill leaving marks and no growing grass. The Tenant states that the lawn was not in perfect condition at move-in.

The Landlord states that the Tenant failed to clean the unit and claims \$420.00. The Landlord provided an invoice for the costs indicating that in addition to cleaning the unit, the cost included the power washing of the patio and removal of "lots" of garbage. The Landlord is not sure who took what garbage this invoice refers to as the Landlord was not present. The Landlord states that the patio required power washing because of the articles left behind there. The Tenant states that he was not able to clean the unit as the Landlord's ex-partner was harassing the Tenant on a daily basis for a couple of weeks before he was able to move out. The Tenant states that a police file has been opened on the matter.

The Landlord states that a fridge shelf was broken and claims the replacement cost of \$51.37. The Landlord states that the shelf has not been replaced for the current tenant and there has been no rent loss.

The Landlord states that when the Tenant signed the tenancy agreement the Tenant agreed to purchase a 2 year old trundle bed and suite for \$1,000.00. The Landlord states that this oral agreement was made because the Landlord knew he would use it for his children. The Landlord states that the Tenant left the suite with a mattress damaged by children's urine and claims \$200.00 for its replacement. It is noted that the tenancy agreement provides that the rent includes use of a trundle bed. The Tenant states that there was no agreement to purchase the bed or suite and that the Landlord was going to advertise the bed for sale online. The Tenant states the Landlord told the Tenant that it could be used by the Tenant until sold by the Landlord. The Tenant states that a water proof cover was used over the mattress as one of his children had bed wetting problems.

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 the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established.

Based on the undisputed facts I find that the Landlord has substantiated that the Tenant failed to pay utilities in the amount of **\$134.00** and that the Landlord is entitled to that amount.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the tenancy agreement provides that rent is payable on the 1st and 15 of each month I find that the rent of \$1,100.00 is payable on those terms, that is \$550.00 on the 1st and \$550.00 on the 15th. Given the undisputed evidence that the keys to the unit were provided to the Tenant early and considering the Landlord's evidence about the children being noted after the keys were provided I find it likely that there was no agreement on rent payment for the early move in. I therefore

dismiss the claim for February 2015 rent. I accept the Tenant's believable evidence that rent was paid for May 1 and find that the Landlord has only substantiated that the Tenant owes rent of **\$550.00** for May 2015.

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. There is no move-in condition report, the Landlord's photos only show a few minor nicks on the walls, there is no supporting evidence of any broken baseboards and the Landlord did not even know what was being repaired for the costs claimed. As a result I find that the Landlord has failed to substantiate that the Tenant left the unit walls or baseboard or transition strip damaged and I dismiss the claim for such painting and repairs to the unit.

Given the Tenant's evidence that garbage was left and based on the Landlord's evidence that garbage was removed to the landfill from both the inside and outside of the unit I find that the Landlord has substantiated **\$505.00** for garbage removal. Considering that the tenancy was brief and given that the Landlord photos do not show any issues with the patio floor thereby requiring power washing and considering that the Landlord has been compensated for removal of the garbage from both the inside and outside of the unit, I find that the Landlord has only substantiated a nominal amount of **\$120.00** for cleaning of the unit.

Given the Tenant's undisputed evidence of the Landlord's children playing in the back yard and the evidence of the mud creation I find that the Landlord has failed to substantiate that the Tenant is responsible for the damage to the back yard lawn and I dismiss this claim.

Given that the Landlord has not provided any evidence of incurred costs or loss, I dismiss the claim for a fridge shelf. Given the lack of any supporting evidence of an agreement to purchase the bedroom suite and considering the lack of any supporting evidence such as a condition inspection report or witness evidence I find that the

Landlord has failed to substantiate that the Tenant caused damage to the mattress and I dismiss this claim.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,409.00**. Deducting the security deposit of **\$500.00** plus zero interest leaves **\$909.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the amount of **\$909.00**. 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: November 10, 2015

Residential Tenancy Branch

