



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on June 16, 2015 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 27, 2015 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Did the Tenant leave the unit damaged and unclean at the end of the tenancy?

Is the Landlord entitled to retain any portion of the security deposit?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy started on June 1, 2015 and ended on May 31, 2015. The Tenants moved into the unit early in May 2015. Rent of \$1,650.00 was payable monthly and at the

outset of the tenancy the Landlord collected \$1,650.00 as a security deposit. The Parties mutually conducted a move-in and move-out condition inspection and a report was completed. The Tenant did not agree with the move-out report. The Tenant provided the forwarding address on the move-out report completed on June 1, 2015. The Tenant owes the Landlord **\$73.00** for NSF cheque charges.

The Landlord states that it collected the equivalent of a month's rent for a security deposit because the tenancy agreement provided for this amount and the Tenant agreed to pay it. The Tenant states that it was pressured to pay this amount and as they wanted to rent the unit they felt they had no choice but to pay this amount. The Tenant claims return of the security deposit.

The Tenant states that there was no agreement with the move-out report because the Landlord noted problems that either were there previously or were not existent. The Tenant states that while the move-in condition inspection took 10 minutes and the move-out inspection took two hours. The Tenant states that during the move-out inspection they suspected problems would arise since the Landlord was being extremely detailed at move-out and yet at move-in the Landlord simply marked everything "good" despite the existence of some damages being present. The Tenant states that they proceeded to take video evidence of the unit at move-out. The Tenant provided this video as evidence. The Tenant states that the Landlord was speaking another language to its agent during the move-out that was inadvertently picked up by the Tenant's video recording. The Tenant states that they had this audio conversation translated and it shows that the Landlord was purposely exaggerating the condition at move-out. The Tenant states that the Landlord carried out the same behavior with the tenants that moved in after the Tenant and for their inspection report checked everything as good even when marked stained on the Tenant's copy of move-out report. The Tenant provided both a witness letter from the new tenants and a copy of their move-in condition report.

The Landlord states that the Tenant failed to leave the unit clean and undamaged. The Landlord claims \$630.00 for the costs of patching and painting various walls, the kitchen ceiling and other areas in the unit. The Landlord provided an invoice for the total amount and it is noted that the invoice does not break down the costs for the various jobs. The Landlord states that the unit was freshly painted at the outset of the tenancy. The Landlord states that the ceiling was damaged by the accumulation of grease and soot from the use of the stove without the exhaust fan operational. The Landlord states that the closet doors were noted by the repair person as bleached or stripped.

The Tenant states that there was a small discolored area on the kitchen ceiling at move in and that it grew larger during the tenancy. The Tenant states that they attempted to wipe the area during the tenancy but it only removed the paint layer. The Tenant agrees that the ceiling was discolored but not to the extent claimed by the Landlord and that any discoloration was not caused by the Tenant as they always used the exhaust and fan for cooking. The Tenant states that the Landlord did not carry out all the painting claimed as shown by photos the Tenant took after the date the Landlord claimed to have painted the unit. The Tenant states that one wall being claimed as painted had been cracked by structural damage and the photo shows that the crack still exists and the wall was not painted. The Landlord states that the cracks on that wall are not part of the Landlord's claim and that the Tenant's photos are not of the rental unit. The Tenant states that the closet doors were faded by sunlight and the Landlord confirms that the doors were opposite a south west facing window.

The Landlord claims \$210.00 for the professional cost of cleaning the carpet and \$140.00 for the cost of Landlord's labour. The Landlord states that the Tenants did not clean the carpets and left stains so the Landlord hired a professional cleaner. The Landlord states that this cleaning did not remove the stains so the Landlord purchased other cleaning products and attempted to remove the stain herself.

The Tenant states that they used their own steam cleaner at move-out and that faint stains were left on the carpet. The Tenant states that only one bad stain existed in the living room and that this stain was there at the onset of the tenancy.

The Landlord claims \$24.72 for the cost of carpet cleaning supplies and a lightbulb. The Landlord states that the Tenants failed to replace a lightbulb in the bathroom. The Landlord provided a receipt for the costs and it is noted that the receipt amount for the lightbulbs indicates a cost for 4 lightbulbs. The Tenant states that they replaced many lightbulbs during the tenancy due to poor construction.

The Landlord claims \$33.90 for the cost of replacing the light in the microwave and the cost of replacing a bathroom stopper. The Tenant states that the new tenant informed the Tenants that there was no microwave lightbulb present or replaced for their tenancy. The Tenant states that there was no problem with the stopper and that it was fully functional. The Tenant states that the Landlord's new stopper is the old stopper.

The Landlord claims \$30.00 for the cost of replacing a broken window handle. The Landlord provided one of these handles for the replacement. The Landlord states that they are claiming \$10.00 for the cost of the handle and \$20.00 for the labour to install the handle. No invoice was provided for the labour. The Tenant states that the handle became loose during the tenancy and that this was not reported to the Landlord as the Tenant felt it was minor and did not warrant a complaint to the Landlord. The Tenant states that the photos show that all the handles are loose and hanging.

Analysis

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Further if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of

this Act or the regulations. At this point, the issue of the Landlord's act to collect more security deposit than allowed under the Act is moot as the tenancy has ended and the return of security deposit is dealt with below. I provide these sections of the Act to the Landlord as a caution that they may not seek any more security deposit than provided for under the Act even where a tenant agrees under a signed tenancy agreement.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

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.

Considering the Tenant's Witness evidence in the form of a letter from the new tenant and a copy of the new tenant's move-in condition report, the translated audio of the Landlord's conversation during the move-out, the Tenant's photos and video evidence of the unit taken during the move-out report, and the Tenant's own persuasive oral evidence I find that overall I prefer the Tenant's evidence of the clean and undamaged condition of the unit at move-out. I find that any damage to the unit at the end of the tenancy was either reasonable wear and tear or if there were any damages beyond reasonable wear and tear the costs were not substantiated by the Landlord as having been incurred. I therefore dismiss all the claims in relation to damages to the unit. Given the Tenant's agreement to the claim for NSF costs I find that the Landlord has only substantiated its claim to **\$73.00**. As none of the Landlord's claims beyond the agreed costs has had any merit, I decline to award recovery of the filing fee.

Deducting the Landlord's entitlement of **\$73.00** from the Tenant's security deposit of **\$1,650.00** and zero interest leaves **\$1,577.00** owed to the Tenant. As the Tenant has successful in obtaining the return of most of the security deposit, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,627.00**.

Conclusion

I Order the Landlord to retain **\$73.00** from the security deposit plus interest of \$1,650.00.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$1,627.00**. 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: December 3, 2015

Residential Tenancy Branch

