



Dispute Resolution Services

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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 made July 17, 2015 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 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

Does the Tenant owe unpaid rent and utilities?

Did the Tenant leave the unit unclean and with damages over reasonable wear and tear?

Did the Tenant end the fixed term early?

Does the Landlord's application have merit?

Background and Evidence

The tenancy started on June 1, 2014 for a fixed term to end May 31, 2015. Rent of \$900.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit and \$450.00 as a pet deposit. The Parties mutually conducted a move-in inspection on June 1, 2014.

The Tenant states that on June 1, 2015 the unit was not ready for him to move into as the Landlord had not finished repairs on the unit. The Tenant states that he took possession of the unit on June 7, 2015 but the house was still not ready so the Tenant finally moved in on June 14, 2015. The Tenant states that he did not agree with the move inspection report so did not sign it. The Tenant states that the Landlord failed to mark damaged items on the move-in report.

The Landlord states that it gave the Tenant two opportunities to conduct a move-out inspection but the Tenant did not reply. The Tenant states that the Tenant asked for the move-out inspection to take place on the day he moved out of the unit on May 17, 2015. The Tenant states that despite the Landlord being present at his move-out the Landlord refused to conduct the inspection on that date citing family problems as preventing the inspection. The Tenant indicates that the Landlord has conveniently used this excuse in the past, such as at move-in. The Tenant states that he did not return the Landlord's calls for an inspection after the Landlord's refusal on move-out day.

The Landlord states that the Tenant failed to pay rent for May 2015 and claims \$900.00. The Tenant agrees that the cheque for May 2015 rent was returned NSF.

The Landlord states that the tenancy agreement provides that the Tenant pay 50% of the hydro and 33% of the gas bills and that the Tenant failed to pay for three utility bills. The Landlord claims \$248.00. The Landlord provided copies of a Hydro bill for the period September 20 to November 20, 2014 in the amount of \$379.14 and a gas bill for the prior October 20 to November 20, 2014 for \$124.55. The Tenant states that he paid all the utility bills during the tenancy.

The Landlord states that the Tenant damaged the entrance door and an inside door and while the Landlord initially claimed \$1,034.33 the Landlord now only claims \$600.00 for the loss in value of the door and \$100.00 for repairs done to the damaged door frame by the Landlord's son. The Landlord states that the door was not replaced and that it was present when the Landlord bought the property in 2004. The Landlord states that the son was not paid for the repairs to the door frame. The Landlord provided photos of the entrance door. The Tenant

states that the door was damaged at move-in and that the Tenant did not contribute to any of the damages shown on the door.

The Landlord states that the Tenant cracked the bottom of a bedroom door and claims \$99.00 for its replacement. The Landlord provided an invoice for this cost. The Tenant states that this crack was present at move in and was one of the items that the Tenant did not agree with at move-in. The Tenant states that the damage to this door would have been noted on the move-in report but the Landlord refused to note it as damaged. The Tenant states that all the damages the Landlord is claiming for today are part of the damages that were pre-existing at move-in and were part of the repairs the Landlord was supposed to have done at move-in.

The Landlord states that the Tenant damaged the walls and ceiling of the unit and claims \$1,160 + 139.20(tax) as the original cost to paint the entire unit at move-in. The Landlord provides photos of walls and states that the unit has not been painted as the Landlord does not have the funds. The Landlord states that the unit was re-rented to another tenant with the damages existing on the walls and that the Landlord obtained a monthly rental rate of \$1,000.00. The Tenant states that it did not damage any walls.

The Landlord states that the Tenant threw out the garden lights that were 4 or 5 years old and claims \$334.57 for their replacement. The Landlord provided a receipt for the costs claimed. The Tenant states that the landscaper who was obtained by the Tenant and worked on the yard with permission from the Landlord threw out the lights. The Tenant states that this occurred at the beginning of the tenancy, that the Landlord was aware of this and that the Landlord never mentioned any problem during the tenancy. The Landlord states that during the tenancy the Tenant replaced lights in the yard but that the Tenant then removed the lights at move-out.

The Landlord states that the tenancy agreement provides for \$300.00 to be paid as liquidated damages if the tenancy ends before the end of the term. The Landlord states that the Tenant gave two months' notice to end the tenancy on May 31, 2015 but as the Tenant failed to pay for May 2015 rent the Tenant now also owes the \$300.00. The Tenant denies any liability for the liquidated damages.

The Landlord states that the Tenant failed to leave the unit reasonably clean and claims \$200.00 for cleaning costs and \$125.00 for carpet cleaning. The Landlord provided photos. The Landlord states that the Tenant only did surface cleaning and failed to clean inside the cabinets, under the appliances that were on wheels and failed to clean the blinds. The Tenant states that the unit was professionally cleaned at move-out and that the Tenant borrowed a friend's carpet cleaner to clean the carpets at move-out. The Tenant states that the stains left on the carpet were there previously.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence of the Parties I find that the Landlord has substantiated that May 2015 rent has been unpaid. I find that the Landlord is therefore entitled to **\$900.00**.

Section 35 of the Act provides that at move-out a landlord and tenant must together inspect the condition of a rental unit. 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 given two opportunities for inspection and the tenant has not participated on either occasion. Based on the undisputed evidence that the Tenant failed to attend a move-out inspection on either of the two opportunities provided by the Landlord I find that the Tenant's right to return of the security deposit is extinguished. The security deposit amount will be applied to the Landlord's entitlements.

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. Accepting the Tenant's undisputed evidence that the unit was still being worked on by the Landlord after the date of the move-in inspection I accept the Tenant's evidence that pre-existing damage was not noted on the move-in report. This reduces the credibility of the report and correspondingly the credibility of the Landlord's evidence of damage. As a result I prefer the Tenant's evidence that the damage to the doors was pre-existing and I dismiss the Landlord's claims for the damage to the doors.

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 costs were incurred or that a loss occurred. Although the Tenant claims to have paid all the utility bills during the tenancy I prefer the Landlord's more credible evidence on this point and consider that the Tenant did not provide any copies of cheques or other evidence to support that payments were made. However, given that the Landlord only provided two invoices I find that the Landlord is only entitled to unpaid hydro in the amount of **\$189.57** and unpaid gas in the amount of **\$41.52**.

Given the evidence that the unit was not painted by the Landlord and that the Landlord suffered no loss in rent I find that the Landlord has failed to substantiate the costs or loss claimed and I dismiss this claim.

Although I accept that a landscaper worked on the yard with the permission of the Landlord, I find it difficult to accept that a landscaper would throw away any property without first informing or obtaining permission from the owner or client. In this instance, and generously accepting that the landscaper threw out the lights, I consider that the landscaper most likely disposed of the lights after informing the Tenant and on the instructions of the Tenant as the client. As such I find that the Landlord has substantiated that the Tenant caused the loss of the lights. However, given the age of the lights I find that the loss in value was minimal and that the Landlord is therefore only entitled to a nominal amount of **\$50.00**.

As the tenancy ended at the end of the fixed term and not before the fixed term I find that the Landlord has not substantiated that the Tenant breached the fixed term and I dismiss the claim for liquidated damages

Although the Tenant states that the unit was cleaned at move-out considering the photos of the Landlord I prefer the Landlord's evidence that the unit was surface cleaned and that the carpet was not cleaned. However as cleaning was done by the Tenant I find that the Landlord has only substantiated half the amount claimed or **\$100.00** for the remaining cleaning of the unit. As the Tenant provided no supporting evidence of the carpet cleaning and considering that the Landlord's photos show a carpet that does not appear to have been cleaned at all, I find that the Landlord has substantiated the costs for cleaning the carpet in the amount of **\$125.00**.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,456.09**. Deducting the security and pet deposit plus zero interest of **\$900.00** leaves **\$556.09** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security and pet deposit plus interest of \$900.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$556.09**. 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 11, 2015

Residential Tenancy Branch

