



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, 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 Tenant applied on October 6, 2015 for:

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

The Landlord applied on September 29, 2015 for:

1. An Order to retain the security deposit - Section 38.

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

Is the Tenant entitled to the compensation claimed?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on October 15, 2012. Rent of \$1,300.00 was payable on the 15th day of each month. At the outset of the tenancy the Landlord collected \$1,300.00 as a security deposit. The Parties did a walk through prior to the Tenant moving into the unit however no other inspection or condition report was completed. The Tenant gave notice to end the tenancy for September 15, 2015, moved out of the unit on September 5, 2015 and returned the keys on or about September 10, 2015.

The Landlord is unsure when the Tenant provided the forwarding address. The Tenant states that the forwarding address was provided by mail on October 2, 2015, followed up by an email on that same date. The Tenant claims return of the security deposit.

The Landlord states that the Tenant left the unit unclean and damaged and claims as follows:

- \$114.00 and \$200.00 for the cost of purchasing and installing a replacement toilet. The Landlord states that the Tenant informed the Landlord about a year after the tenancy started that the toilet, which has been installed in 2009, had a crack at its base. The Landlord states that since there was no leak from the crack the toilet was not repaired at the time. The Landlord states that at the end of the tenancy the crack had grown larger however there was still no leak and the toilet operated as usual. The Landlord states that a new toilet was purchased and installed by her father. The Tenant states that the Tenant did nothing to cause the crack and nothing fell on the toilet. The Tenant states that it is more likely the crack occurred as a result of improper installation;
- \$153.00 for the cost of paint to cover all the kitchen cabinets. The Landlord states that the Tenant left only 4 of the cabinets damaged but since the paint could not be matched the Landlord had to paint all the cabinets. The Tenant states that there were some marks on the cupboards at move-in and that the Landlord at that time told the Tenant there was paint available to touch up the spots. The Tenant states that no paint was present. The Tenant states that since the paint on the cabinets was thick the Tenant was not surprised that more paint fell off where the garbage was placed;
- \$25.00 in material costs for repairing the screen door. The Landlord states that the screen door has a duct taped hole and that since there was no hole at the outset of the tenancy the Tenant caused the damage. The Tenant states that the hole existed at move-in but that it was not overly bothersome and that the Tenant only placed duct tape over it to keep out mosquitoes;
- \$720.00 for the income lost by the Landlord whose took 3 days off work to clean and repair the unit. The Landlord states that the Tenant did not clean anything, including the carpets and left mold in the bathroom grout. The Landlord states that the bathroom was re-siliconed, screen door was repaired, the cupboards were all painted, and the dryer was cleaned. The Tenant states that the unit was extensively cleaned at the end of the tenancy. The Tenant states that the floors, walls, baseboards, appliances and washroom were cleaned. The Tenant states that the stains in the carpet were there at move-in and that the Tenant did try to remove them but they remained. The Tenant states that the Landlord had offered at the onset to replace or clean the carpets but the Tenant told the Landlord not to bother. The Tenant states that she was unable to pull out the washer and dryer from the closet and that this area was not cleaned at the outset.

Analysis

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on the undisputed evidence that no formal inspection took place at the onset of the tenancy I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished.

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. As the Landlord right to claim against the security deposit was extinguished, while nothing was stopping the Landlord from making its application to claim for damages to the unit, I find that the Landlord was still required to return the security deposit to the Tenant within 15 days receipt of the forwarding address. As the Landlord did not do this I find that the Landlord is now required to pay the Tenant double the security deposit plus zero interest in the amount of **\$2,600.00**.

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.

Given the evidence that the toilet was cracked and reported by the Tenant within a year of the start of the tenancy, the Landlord did nothing to repair the crack or to seek the Tenant's responsibility to repair the crack during the tenancy, and considering the Tenant's evidence that nothing was done by the Tenant to cause the crack I find that the Landlord has not substantiated that the Tenant caused the damage to the toilet and I dismiss this claim.

Given the lack of a move-in report and accepting the Tenant's plausible evidence that the cabinets had some chips at move-in but that more occurred during the tenancy I find that the Landlord has substantiated only some portion damage by the Tenant. I find that the Landlord has therefore only substantiated a nominal amount of **\$100.00** for the paint costs and labour to repair the Tenant's portion of damage to the cabinets.

Given the lack of a move-in condition report and accepting the Tenant's plausible evidence that a hole existed on the screen at move-in I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused the damage to the screen. I dismiss this claim.

As the Landlord provided no evidence of income I find that the Landlord has failed to substantiate the claim for lost income. Further the photos do not show anything unclean other than the dryer area and carpet and I accept the Tenant's evidence that the unit was otherwise left reasonably clean. The photos of the bathroom show aged grout and I do not consider the replacement of this grout to be the Tenants responsibility. Given the lack of a move-in report, considering the Tenant's plausible evidence that the dryer could not be moved out by the Tenant and that the carpet was stained at move-in I find that the Landlord has not substantiated on a balance of probabilities that the unit was left unclean by the Tenant and I dismiss all claims for cleaning costs.

As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total of **\$2,650.00**. Deducting the Landlord's entitlement of **\$100.00** leaves **\$2,550.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,550.00**. 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: March 18, 2016

Residential Tenancy Branch