



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, 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 damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. 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

Did the Tenant leave the unit unclean and damaged?

Did the Tenant cause the Landlord to lose rental income?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord's right to claim against the security deposit extinguished?

Background and Evidence

The tenancy started on May 1, 2012. Rent of \$1,030.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$487.50 as a security deposit and \$200.00 as a pet deposit. The Landlord states that the Parties conducted a move-in inspection but no report was completed. The Tenant states that no move-in inspection was conducted. The Landlord states that the tenancy ended on August 17, 2015. The Tenant states that the tenancy ended on August 15, 2015 when they moved out of the unit. The Parties did a move-out inspection on August 17, 2015 and the keys were returned on that date. The move-out condition report notes that the forwarding address was provided on the same date. The Landlord indicates that since there was no move-in report noting the state of the unit they have discounted all the damage claims being made.

The Landlord states that while the hardwood floors in the unit were not in perfect condition at the outset of the tenancy the Tenant left them damaged to the extent that they required refinishing. The Landlord states that the 71 year old unit was purchased 7 years ago and that he has no knowledge of when the floors were installed or last refinished. The Landlord states that although \$1,168.13 was spent refinishing the floors the Landor only claims \$479.00 The

Landlord provides photos of the unit before repairs to the floor. The Landlord states that while showing the unit for the next tenancy the Tenant was informed that the floors would be refinished and the Landlord believes that they informed the Tenant that there was unacceptable wear and tear on the floors. The Landlord states that more pets and persons were in the unit than was agreed to by the Landlord.

The Tenant denies all the damages and states that the floors had lots of wear at move-in. The Tenant states that the Landlord had the intention to refinish the floors prior to the move out walkthrough as indicated in the Landlord's letter from the new tenant. The Tenant states that the Landlord was in the unit during the term, always said the place looked good and never said anything about the floors being damaged.

The Landlord states that the Tenant left a hole in the bathtub surround. The Landlord provided a photo of a hole under a shelf in the tub surround. The Landlord states that it would not be possible to patch the area with anything that would match and that the surround was also warped. The Landlord states that water could also get through any patch to the wood behind. The Landlord states that replacement of the entire tub surround is required. The Landlord states that the repairs have not yet been done. The Landlord states that the next tenant is paying rent of \$1,100.00 and no discount was provided or promises made to this tenant in relation to the damaged tub surround. The Tenant states that no hole was ever noticed on the surround and that she does not know if it was present at the outset of the tenancy. The Tenant states that she never used a candle on the shelf.

The Landlord states that the Tenant left the fireplace glass with a crack. The Landlord claims \$280.00 for the repair costs and provides the invoice. The Tenant states that the glass on the fireplace was not broken at move-out.

The Landlord states that the fridge and stove were left dirty inside, outside and underneath. The Landlord states that the stove is not on rollers but the fridge is. The Landlord states that the tenancy agreement provides a set cost of \$150.00 for cleaning these appliances. The Landlord states that the work was done by him and claims \$150.00. The Landlord agrees that not all of the black stains in the oven came off but a majority did. The Tenant states that the fridge and stove were cleaned. The Tenant states that stains left on the bottom of the stove were present and worse at move-in and that during the tenancy the Tenant cleaned the oven 20 times but could not remove all the stains.

The Landlord states that among other things the Tenant left a table and chair in the garage and truck parts at the unit. The Landlord states that the garbage was taken to the dump and that the total dump fees of \$29.75 are included in the \$100.00 claimed by the Landlord. The Tenant states that all the garbage was removed, that no tires or parts were left behind. The Tenant states that she has no idea how the Landlord would have gotten the photos showing the tires, etc. The Tenant does not dispute that the table was left behind.

The Landlord states that on July 5, 2015 the Tenant gave notice to end the tenancy as soon as possible and no later than August 7, 2015. The Landlord states that as a new tenant was lined

up for August 15, 2015 the Landlord only required the Tenant's payment of \$515.00 for the half month's rent. The Landlord states that the Tenant's left the unit unclean and that the Landlord had to carry out three days of cleaning. The Landlord states that the floor refinishing also had to be delayed and was not completed by the company until August 25, 2015. The Landlord states that the new tenants could not move in on August 15, 2015 and claims lost rental income of \$515.00. The Tenant states that they wanted to move out of the unit by the end of the month but the Landlord required more time so they agreed to an end date of August 15, 2015. The Landlord states that the Tenant was allowed to stay until August 15, 2015 as they had paid the rent to that date.

Analysis

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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. 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 lack of a move in report there is no evidence of the condition of the unit at move-in. Considering that The Landlord's photos taken before the tenancy show floors that are primarily covered with rugs and furniture I find that the Landlord has not provided sufficient evidence to prove on a balance of probabilities that Tenant caused any excessive wear and tear on the likely very old hardwood floors. Given the new tenant's letter I also find it more likely that the Landlord intended to refinish the floors regardless of their state at the end of the tenancy. As such I find that the Landlord has failed to substantiate on a balance of probabilities that the Tenant caused the floors to require refinishing. I therefore dismiss the costs of that refinishing.

Although it is clear that the tub surround had a hole, given the lack of a move-in report and considering the Tenant's plausible evidence that the hole was never noticed I find that the Landlord has not provided sufficient evidence to substantiate on a balance of probabilities that the damage did not exist at the onset of the tenancy. I therefore dismiss the claim for the replacement of the tub surround.

Based on the undisputed evidence that the Landlord agreed to the tenancy end date of August 15, 2015 I find that the tenancy ended on that date and that no further rent was payable by the Tenants. As the refinishing of the floors was not a task caused by the Tenant and considering that the photos of the unit and the Landlord's evidence of cleaning time do not support the half month of loss claimed for uncleanliness, I find that the Landlord has not substantiated that the Tenant caused a loss of rental income and I dismiss the claim.

Although the Tenant denies that the fireplace was cracked during the tenancy, considering the notation of this damage on the move-out report and given the Landlord's before tenancy photos I find that the Landlord has substantiated on a balance of probabilities that the Tenant caused

the damage to the fireplace. Given the invoice for the cost of repairs I find that the Landlord has substantiated an entitlement to **\$280.00**.

Given the photos of the stove top, oven and fridge and the articles in the yard I find that the Landlord has shown that the Tenant failed to leave the unit reasonably clean and that the Landlord is entitled to compensation of the prior agreed amount of **\$150.00** for cleaning the appliances and **\$100.00** for the garbage removal.

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. As the Landlord failed to complete a move-in condition inspection report I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in.

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. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord's claim for lost rental income had no basis and as the right to claim against the security deposit was extinguished, while the Landlord could still make an application, I find that the Landlord was required to return the security deposit in full to the Tenant following receipt of the forwarding address. As the Landlord failed to return the security deposit I find that the Landlord must now pay the Tenant double the combined pet and security deposit plus zero interest in the amount of **\$1,374.00**.

As the Landlord's application for damages to the unit has met with merit I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$580.00**. Deducting this amount from the amount owed to the Tenant leaves **\$794.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$794.00**. 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 04, 2016

Residential Tenancy Branch

