



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing convened on December 14, 2015 and was adjourned after 28 minutes to allow the Tenant an opportunity to review the Landlord's documentary evidence. An Interim Decision was issued on December 14, 2015 granting the Tenant leave to submit additional documentary evidence. Accordingly, this Decision must be read in conjunction with my December 14, 2015 Interim Decision.

The hearing reconvened via teleconference on March 9, 2016 and continued for 131 minutes. The Landlord and Tenant attended the reconvened hearing and provided affirmed testimony.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me. Although I considered relevant submissions that were contained in the volumes of documentary evidence before me, all of the relevant evidence it is not listed in this Decision.

Issue(s) to be Decided

Has the Landlord proven entitlement to \$5,485.83 monetary compensation?

Background and Evidence

The Landlord and Tenant entered into a written fixed term tenancy agreement that began on March 1, 2012 and switched to a month to month tenancy after February 28, 2013. Rent of \$1,500.00 was payable on or before the first of each month. On February 7, 2012 the Tenant paid \$750.00 as the security deposit. No move in or move out condition inspection report forms were completed.

The rental unit was described as being the upper level of a single detached house that was built in the 1970's. The Landlord purchased the house in 1990 and submitted evidence that the house had been renovated in 2011 which included, among other things, new flooring and painting. The upper level consisted of: 3 bedrooms; 1 bathroom; living room; kitchen; and in-suite laundry. The lower level was a separate

self-contained suite which had been occupied by the Landlord's property and a different tenant under a separate tenancy agreement.

On April 24, 2015 the Tenant informed the Landlord via text message he would be ending his tenancy effective June 30, 2015. The Tenant vacated the rental unit in accordance with that notice on June 30, 2015. The Tenant provided the Landlord with his forwarding address on July 4, 2015 via text message.

Upon review of the Landlord's application the Landlord testified his monetary claim consisted of the following: (1) \$248.00 for an estimate of professional cleaning costs; (2) \$335.00 for an estimate of carpet cleaning costs; (3) \$1,890.00 for an estimate for painting costs; (4) \$1,344.00 for an estimate to replace the master bedroom carpet; and (5) \$97.83 for the actual cost to re-key the locks plus the cost of 3 new keys.

The Landlord testified he had filed his application with the estimates in order to get his claim filed within the required time frames. He submitted the work has since been performed and receipts were provided in his evidence. He stated he now seeks the following:

1. \$248.00 for the maid service which cleaned the rental unit, as per the invoice dated July 24, 2015 and their written statement submitted into evidence. The Landlord said the maids attempted to clean a stain off of the bedroom wall and nearly wiped the paint off with their attempts and still could not get the stain off.
2. \$246.75 for carpet cleaning which was completed on July 30, 2015 as per the invoice submitted into evidence. The Landlord argued the Tenant left stains in the carpet and there was also soap residue left on the carpet by the cleaners which were hired by the Tenant. The carpet cleaning receipt was signed by the new tenant who had been given access to the rental unit sometime in July 2015.
3. \$1,995.00 for painting of all interior walls; touch up in bathroom; repairs to pot-lights; caulk open joints on door frames; paint all closets and pantry; and make touch ups on all semi-gloss. The invoice was dated July 31, 2015. The Landlord argued the Tenant left two nails in the wall above a bedroom door; there was one gauge in the wall, and a stain on the wall from what he believed to be dye from a pillow case.
4. \$1,078.59 based on the estimated cost to replace the master bedroom carpet less the cost of underlay. The Landlord argued there were stains on that carpet which could not be removed by cleaning as stated on the carpet cleaning invoice. He asserted he was entitled to the amount claimed because the carpet was new and installed on December 18, 2011.

5. \$97.83 to re-key the locks after the Tenant vacated the rental unit. The Landlord argued he did not feel safe leaving the locks the same after this tenancy ended because the Tenant used abusive language towards him. He asserted he had given the Tenant keys for three doors at the start of the tenancy and only 1 key was left on the kitchen counter after the Tenant left.

The Landlord testified he did not serve the Tenant written notice of two dates or two times to conduct the move out inspection and he did not serve the Tenant a final notice of opportunity for inspection.

The Landlord stated he preferred to communicate with the Tenant verbally, in person or over the phone. He asserted when he attempted to schedule the move out inspection over the phone the Tenant was verbally abusive to him. He said he did not suggest a time to meet because the Tenant was not amenable with him and their timeline simply did not permit a meeting. He stated he had two telephone calls with the Tenant on July 3, 2015 and an opportunity to do the walk through simply did not present itself.

The Landlord testified he did not attend the rental unit until July 2, 2015 when he arrived with his daughter. He said he took some pictures on July 2 and returned on July 3, 2015 to take the rest of the pictures. The Landlord argued that he was not available to be at the rental unit earlier because his wife had had surgery on June 24, 2015 and he had to care for her and his daughter.

The Landlord stated his new tenant for the upper level was assisting him in getting things cleaned up and repaired so he let her move some of her possessions into the rental unit prior to August 1, 2015. Upon further questioning the Landlord said he could not provide the exact date when the new tenant was given access to the upper level unit.

The Landlord provided evidence that his tenant in the lower level ended his tenancy effective July 31, 2015. He said the lower rental unit consisted of basically the same footprint as the upstairs except it had two bedrooms instead of three. After further clarification the Landlord testified the lower tenant had purchased a home and moved his possessions out of the unit gradually throughout the month of July. The Landlord confirmed the lower tenant was completely moved out prior to July 31, 2015 but he could not state the exact date. The Landlord stated the lower tenant agreed to the amounts claimed by the Landlord for cleaning and/or repairs identified by the Landlord for the lower level suite.

The Tenant testified that he was expecting the Landlord to show up at the rental unit to conduct the move out inspection and when the Landlord did not show he had called the Landlord to say he was finished moving out. The Landlord did not answer so the Tenant said he called back a second time and left a message. The Tenant stated he had left one key with the downstairs Tenant so the Landlord could gain access and he left the rest of the keys on the kitchen counter. The Tenant asserted he had expected to meet the Landlord at the rental unit; however, the Landlord failed to show up.

The Tenant testified he agreed the Landlord should be paid about \$50.00 for cleaning costs because they did forget to vacuum the back stairway, which they never used, and he had left a bag of garbage inside and his cleaning supplies on the counter. He argued he had cleaned the rental unit including the bathroom, walls, windows, window and door runners, the fridge and even the window screens. He argued there was no way a maid service would have had to spend two days in the rental unit cleaning and certainly not at a cost of \$248.00. He questioned why the cleaning was not completed until July 28 or 30th which is a month after he moved out and after the new tenant had moved her possessions into the rental unit.

The Tenant pointed to his documentary evidence which included a carpet cleaning receipt dated June 30, 2015 and questioned why the carpets had to be cleaned again. He confirmed the master bedroom carpet had been stained during the tenancy. He said the stain was only in the master bedroom and nowhere else. He argued he could not see the stain immediately after the carpets were cleaned. He asserted the damage to the carpet was only small cosmetic damage. He argued the new tenant is occupying the rental unit with that same carpet so he should not have to pay to have the carpet fully replaced. The Tenant questioned why the Landlord had the carpets cleaned after the new tenant moved into the upper level suite.

The Tenant submitted he did not believe the walls had been freshly painted just prior to his moving into the rental unit. He argued he did not hang any pictures on the walls and only hung a crucifix and put two nails above his daughter's bedroom door to hang up her beads. He said the Landlord testified it was the maids who rubbed the paint off of the wall. He argued he had only seen a quote and not an actual receipt for painting.

The Tenant continued his submissions that he should not have to pay to have the master bedroom carpet replaced because of the small stain. He argued the stain did not render the carpet unusable and therefore he should not have to pay to replace it.

The Tenant testified he returned all of the keys that were given to him. He said they were never given keys to three doors as stated by the Landlord, only two doors. He

disputed the Landlord's submission that he was abusive towards the Landlord requiring the keys had to be changed. The Tenant stated that he wished the Landlord would have given him the opportunity to meet with the Landlord at the rental unit when he moved out.

The Landlord asserted the Tenant acknowledged garbage was left behind and had to be removed. He said he had not previously been told a key was left with the downstairs tenant and his pictures show the unit was not fully cleaned. He asserted his receipts showed the work was completed.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Rule of Procedure 7.4 stipulates that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Based on the above, and in absence of a monetary order worksheet, I heard evidence relating to the Landlord's monetary claim for cleaning and repairs as presented by the Landlord during the hearing. The Landlord testified his claim consisted of five items he listed off during his testimony. I asked the Landlord several times if there was anything further he was claiming and each time he said he had nothing further to add. Accordingly, any amounts or items listed on the application which were not presented by the Landlord during the hearing are dismissed, without leave to reapply.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 45 (1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 44(1)(d) of the *Act* stipulates that tenancy ends on the date the tenant vacates or abandons the rental unit.

In this case I accept the submissions the parties established a form of communication including verbal communication, email, and text message. The undisputed evidence was the Tenant informed the Landlord, via text message, on April 24, 2015 that he would be ending the tenancy effective June 30, 2015. I find there was sufficient evidence before me that the Landlord accepted and acted on that notice to end tenancy. Accordingly, I find this tenancy end **June 30, 2015**, pursuant to sections 44 and 45 of the *Act*.

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

At the start of any tenancy, the Landlord has the responsibility to ensure the requirements of the *Act* and regulations are met with respect to completion of the move in condition inspection report. The Landlord is in full control as they hold the keys to the rental unit. Simply put, if a tenant refuses to complete and sign a move in inspection report the Landlord can refuse the tenant access to the unit.

Section 35 of the *Act* provides, in part, that that it is the landlord who must offer the tenant at least 2 opportunities, as prescribed, for the inspection. It further states the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

Section 36(2) of the *Act* stipulates the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) [2 opportunities for inspection]; having complied with section 35 (2), does not participate on either occasion;

or having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed evidence, no condition inspection report forms were completed by the Landlord at move in or move out. Notwithstanding the Landlord's submissions that he was busy attending to his wife and his daughter in June 2015, I find there was insufficient evidence before me to prove the Landlord was prevented from conducting a move in inspection at the start of the tenancy. Furthermore, I find there was insufficient evidence to prove the Tenant was abusive towards the Landlord at the end of the tenancy. There was also insufficient evidence to prove the Landlord was prevented from appointing or hiring an agent to assist him if he was consumed with caring for his family.

Therefore, I find the Landlord breached sections 23 and 35 of the *Act* by failing to conduct inspections and by failing to complete condition inspection report forms. Accordingly, I find the Landlord extinguished his right to claim damages against the security deposit. That being said, the Landlord did not extinguish his right to file an application to claim for damage or loss, he simply was not entitled to retain the security deposit.

Upon review of the Landlord's submissions I find it presumptuously suspicious that all of the cleaning and/or repairs were completed between July 24, 2015 and July 31, 2015 when the Tenant vacated the rental unit June 30, 2015. I do not accept the Landlord's submissions that the delays were entirely the result of his personal situation relating to his wife's illness.

The Landlord testified the lower tenant vacated prior to the end of July 2015; and the new tenant moved her possession into the upper rental unit prior to the end of July 2015. By his own submissions, the Landlord acknowledged there were cleaning and/or repair issues in the lower suite. In addition, the only receipt submitted into evidence by the Landlord that stipulated the work was completed in the upper suite was the maid receipt. The other receipts simply listed the house address.

Based on the above, I find there was insufficient evidence to prove the receipts for the carpet cleaning; painting; and key cutting were entirely for the upper level rental unit. Furthermore, I find there was insufficient evidence the Tenant did not return all of the keys or did not inform the Landlord a key was left with the lower tenant for the Landlord to gain access.

Upon review of the Landlord's photographic evidence, and in absence of a move out inspection report, I accept the Tenant's submission that the amount of regular cleaning required would not add up to the amount or number of hours billed by the maid service. I further accept the Tenant's submissions that the entire rental unit did not require painting due to this tenancy.

It was undisputed that the master bedroom carpet was stained during this tenancy. The Landlord submitted that the carpet had been installed in December 2011 and the stain was in one section of master bedroom carpet. The Tenant argued that the carpet stain was very light and located in a small area which did not limit the use of the bedroom or the carpet.

After consideration of the foregoing, I find that despite the carpet being cosmetically less appealing it can still be used for its intended purpose, as supported by the fact that it had not been repaired or replaced. Furthermore, there was insufficient evidence before me that the Landlord attempted to mitigate his loss by having the stained area of the carpet re-tinted instead of replaced.

Upon consideration of the above, and based on the totality of the evidence before me, I find the Landlord is entitled to damages comprised of \$120.00 for cleaning costs (4 hours x \$30.00 per hour); \$250.00 for touch up painting (\$200.00 labor plus \$50.00 supplies); and \$350.00 for an estimated amount to have the carpet re-tinted; for a total amount of **\$720.00**, pursuant to section 67 of the *Act*.

In addition, I find there was insufficient evidence to prove the Tenant was responsible to pay for additional carpet cleaning, carpet replacement or re-keying of the locks. Accordingly, those claims are dismissed, without leave to reapply.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the *Act*.

I find that the Landlord's monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$750.00 deposit since February 7, 2012.

As indicated above, the Landlord extinguished his rights to claim against the security deposit and he was required to return the full deposit to the Tenant in accordance with section 38 of the *Act*. Section 38 of the *Act* stipulates that within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit.

This tenancy ended June 30, 2015 and the Landlord received the Tenant's forwarding address on July 4, 2015. The Landlord extinguished his rights to the deposit and was

therefore, required to return the full deposit to the Tenant no later than July 19, 2015. The Landlord did not return the deposit.

Section 38(6) of the *Act* states, in part, if a landlord fails to comply with section 38(1) of the *Act*, the landlord must pay the tenant double the security deposit. Accordingly, I find the Landlord's award must be offset against double the Tenant's security deposit as follows:

Landlord's award	\$ 720.00
Filing Fee awarded	<u>50.00</u>
SUBTOTAL	\$ 770.00
LESS: Double Security Deposit 2 x \$750.00	<u>-1,500.00</u>
Offset amount due to the Tenant	<u>(\$ 730.00)</u>

The Landlord is hereby ordered to pay the Tenant the offset balance of the security deposit of **\$730.00**, forthwith.

In the event the Landlord does not comply with the above order, the Tenant has been issued a Monetary Order in the amount of **\$730.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was partially successful with his application and was awarded \$770.00 which was offset against double the Tenant's security deposit leaving a balance owed to the Tenant of \$730.00.

This decision is final, legally binding, and 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 11, 2016

Residential Tenancy Branch