



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 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - 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.

Preliminary Matter

During the hearing the Tenant clarified her name and asked that the application be amended to have her correct name put on the application. As there is no prejudice to the Landlord in amending the application to correct the Tenant’s name, I amend the application.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Did the Tenant leave the unit unclean and with damages?

Background and Evidence

The rental unit is a suite in the basement of the Landlord's residence. The tenancy agreement names the Tenant and a 3rd party and was signed by a 3rd party for a start date of June 1, 2014 on a fixed term to end May 31, 2015. Rent of \$1,000.00 was payable on the first day of each month for the first 6 months and \$1,050.00 was payable for the next 6 months. At the outset of this tenancy the Landlord collected \$525.00 as security deposit. The 3rd party and Landlord mutually conducted a move-in inspection and completed an inspection report.

The Landlord states that the 3rd party asked that the Tenant's name be included on the tenancy agreement and that the Landlord did not pursue the Tenant's signature as they became friends and the Landlord did not think it was necessary. The Landlord states that in exchange for taking care of the yard throughout the tenancy, the Tenants were given a 6 month discount for the first 6 months of the tenancy and that this is reflected in the terms of rent payable.

The Tenant states that although she moved into the unit with the 3rd party, she was not present for the signing of the tenancy agreement, is not responsible for the tenancy agreement and had no knowledge of why the rent increased for the last 6 months of the tenancy.

The Tenant states and the Landlord does not dispute that the 3rd party moved out of the unit in October or November 2014 while the Tenant remained in the unit. The Tenant states that the Landlord was told that the Tenant would remain in the unit and pay the rent but could not commit to any term of a tenancy. The Landlord confirms that the security deposit was held for the Tenant. The Tenant paid the rents to and including February 2015. There is no dispute that no rent was paid to the Landlord for March 2015. The Landlord claims unpaid rent of \$1,050.00.

The Landlord states that the unit was not clean on March 23, 2015 so the Landlord offered the Tenant more time to clean the unit and to conduct a move-out inspection on

March 28, 2015. The Landlord states that on March 28, 2015 the Tenant came to the unit but nothing was clean so the Tenant then agreed to attend an inspection on March 30, 2015. The Landlord states that the Tenant did not show up on this date so the Landlord conducted the inspection with a witness and completed the form. The Landlord states that she could not provide a copy of this inspection report to the Tenant as the Tenant had given the Landlord an incorrect address. The Tenant states that the Landlord received the Tenant's correct forwarding address at a previous hearing held in August 2015. The Landlord states that she cannot recall how or when she obtained the Tenant's correct address. The Landlord also states that she received the Tenant's forwarding address when the Tenant served the Landlord with the small claims court date for the enforcement of a monetary order issued from the previous hearing.

The Tenant states that she returned the keys and moved out of the unit on March 23, 2015. The Tenant states that she left the unit fully cleaned except for the floors and that on March 23, 2015 she and the Landlord did a "look through" but the Landlord did not have the condition report form with them so they agreed to a move-out inspection on March 27, 2015. The Tenant states that after March 23, 2015 however the Tenant was not able to contact the Landlord despite sending several text and voice messages. No copies of the text messages were provided. The Landlord does not recall when the keys to the unit were returned and states that the Tenant did not move out all on one day. The Landlord states that she cannot recall when the agreement was made for the inspection on March 27, 2015 and maybe this agreement was made between March 23 and 27, 2015. The Landlord states that she cannot recall what happened on March 23, 2015.

The Landlord states that a doorstep was missing from the entrance door and was replaced for \$1.99. The Landlord states that the Tenant also failed to replace 9 missing fluorescent lightbulbs and that the Landlord purchased a package of 12 for \$53.82. The Landlord claims this amount for both items. The Tenant states that she never saw any missing doorstep.

The Landlord states that the Tenant left the unit unclean and that the Landlord had to clean the entire place. The Landlord states that it took her and another person 7 hours to clean the unit. The Landlord claims \$140.00.

The Tenant states that the unit was clean except that the floors needed wiping. The Tenant states that the unit was only 700 square feet and that the Landlord is exaggerating the time it would take to clean the unit. The Landlord states that "this would not have happened if you attended the move out inspection." The Landlord clarifies that if the Tenant had attended the move-out there would be no conflict in the evidence about the state of the unit at move-out.

The Landlord states that while the laminate flooring was damaged at move-in the damage was minor. The Landlord states that the Tenant left further damage and that 12 planks has to be removed and replaced. The Landlord states that her insurance covered the cost to replace the flooring and that the Landlord does not know what that cost was but believes it would be in the thousands of dollars. The Landlord claims the deductible of \$500.00 and provides an invoice from a restoration company for that amount. The Landlord states that the floors were new in 2012 and that the floors were repaired in June or July 2015.

The Tenant states that at move-in the floor was bubbled and that the insurance company attended the unit several times because of mold. The Tenant states that she was told that water was leaking somewhere and that the laminate in the bedroom was removed to take floor samples. The Tenant states that the Landlord took photos of the mold. The Landlord states that no mold remediation was done by the restoration company because the mold that was present only needed wiping off. The Landlord states that the house is still under a new home warranty and that the flooring was not covered because no leak was found.

The Landlord states that the fridge was left dented and with broken plastic drawers. The Landlord states that she was given a quote of \$118.91 for the replacement parts.

The Landlord states that these parts have not been replaced and that no rent discount or promises for replacement was given for the subsequent tenancy. The Landlord claims \$142.59. The Tenant states that she did not damage the fridge and that another tenant moved into the unit right after the Tenant. The Tenant states that the Landlord was always in the unit and would have said something sooner if there were damages.

The Landlord states that she gave the Tenants a table with a glass top and that they used in on their patio. The Landlord states that she never discussed that she would want this table returned to the Landlord. The Landlord states that the glass was broken by the Tenants. The Landlord has not replaced the glass and claims the cost of its delivery and replacement.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Regardless of whether the Tenant signed the original tenancy agreement, given the undisputed evidence that the Tenant lived in the unit from the onset and remained in the unit and continued to pay the rent after the departure of the 3rd party, I find that the Tenant was a co-tenant on the initial tenancy which ended when the 3rd party moved out and became a sole Tenant after the 3rd party moved out. I further find that the Tenant agreed to the same rental amount terms as in the original tenancy agreement. Although I found the apportionment of rent to be problematic, given that the Tenant did not dispute the Landlord's evidence, I accept that the rental terms reflected an agreed discount in exchange for yard work. I also find, based on undisputed evidence that the tenancy agreement became month to month after the 3rd party moved out. Based on these findings and on the Tenant's evidence that no rent was paid for March 2015, regardless of the move-out date that month, I find that the Landlord has substantiated its claim to unpaid rent of **\$1,050.00**.

Section 39 of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has offered

2 opportunities for inspection and the tenant has not participated on either occasion. 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.

Even though the Landlord's evidence was at times vague this was generally in relation to dates. Overall when I consider the Parties oral evidence and the evidence provided in the written agreement in relation to cleaning and inspection, I prefer the Landlord's evidence that the Tenant did not attend any move-out inspections as offered by the Landlord on more than two occasions. I also prefer the Landlord's evidence that the unit was not cleaned at move-out. For these reasons and considering the reasonable amount claimed, I find that the Tenant's right to return of the security deposit was extinguished at move-out and that the Landlord has on a balance of probabilities substantiated the cleaning costs claimed of **\$140.00**.

Based on the undisputed evidence of missing lightbulbs and considering the receipt for costs ($\$53.82/12 = 4.49$) as stated by the Landlord I find that the Landlord has substantiated compensation for 9 bulbs in the total amount of **\$40.41** (9×4.49). I further find based on undisputed evidence that the security deposit from the initial tenancy was transferred to the tenancy with the Tenant. Given that the cost for the doorstep was not included in the claimed amount I dismiss the claim for \$1.99.

Given the lack of any supporting evidence other than an invoice for a deductible, considering the undisputed evidence of the repeated attendance by the insurance people and considering the Tenant's credible evidence of the suspicions of mold, I find that the Landlord has not substantiated that the Tenant caused the flooring to require replacement. I therefore dismiss the claim for the deductible of \$500.00.

As the Landlord provided no evidence of loss or costs, I find that the Landlord has not substantiated an entitlement to costs for damage to the fridge and I dismiss this claim. Based on the Landlord's evidence of having given the table to the Tenant without any expectation of its return I find that the table was a gift to the Tenant and therefore no loss was suffered by the Landlord when it was damaged. I dismiss the claim for the glass replacement.

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 **\$1,280.41**. Deducting the security deposit of **\$525.00** leaves **\$755.41** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$525.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$755.41**. 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: May 3, 2016

Residential Tenancy Branch