



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 damage to the unit - 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 Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Did the Tenant leave the unit damaged?

Did the Landlord incur costs for the damages?

Background and Evidence

The tenancy started in February 2013. Rent of \$1,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted a move-in inspection on February 1, 2013 and a condition inspection report was completed. The Landlord received the Tenant’s forwarding address on October 6, 2015.

The Landlord states that on August 15, 2015 the Tenants gave notice to end the tenancy and paid the rent to September 15, 2015. The Tenants returned the keys to the unit on September 14, 2015. The Landlord was aware that the Tenants were moving off the mainland. The Landlord states that one of the Landlords suffered a heart attack on September 5, 2015 and that due to this the Landlord did not make any offer to inspect the unit until September 29, 2015 when the Tenants were offered an opportunity for a move-out inspection for September 30, 2015 but the Tenants were unable to make this date. The Landlord states that the next day the Landlord offered to set up a convenient time for the Tenants and the Tenants informed the Landlord that they would not be back to the mainland until October 23, 2015. The Landlord states that this was too late as work needed to be done on the unit. The Landlord states that they did not consider obtaining an agent to conduct the inspection. The Landlord states that they did a move-out inspection along on September 28 or 29, 2015 but no copy of a condition report was provided to either the Tenant or for this dispute.

The Tenant states that they tried several times to get the Landlord to attend a move-out inspection and that the Landlord finally informed the Tenants that they would contact them again after the one Landlord went through heart surgery. The Tenant states that they were left not knowing when such an inspection might take place. The Tenants state that they did offer to come back to the mainland on October 7, 2015 however the Landlord did not respond to this offer. The Tenant states that it would cost too much money to come back for an inspection and as the Landlord had already told the Tenants that they would be claiming for damages the Tenants decided that it was ultimately not economically reasonable to attend a move-out inspection as it appeared that it would make no difference. The Tenant states that the unit was already painted by October 5, 2016 when the Landlord refused the inspection offered by the Tenants for October 23, 2015.

The Landlord states that the Tenants patched and painted all the holes on the walls in the unit with the paint provided by the Landlord but that the job left different colors on the walls. The Landlord states that they believe that the Tenant failed to mix the paint

before using it and as a result the paint went on the walls in a lighter color and a different texture. The Landlord states that the paint given to the Tenants was the original paint from early 2012. The Landlord states that they relied on the one Tenant's experience as a contractor to be assured that the paint job would be proper. The Landlord states that since the walls were left with different colors and textures the walls all required painting. The Landlord claims \$700.00 and provides the invoice.

The Tenant confirms that the one Tenant is an engineer and contractor and that the paint was stirred before use. The Tenant states that it appeared to them after the paint had dried that it looked like they had been given a different type of paint than was originally used, i.e., matte paint instead of pearl or a latex paint. The Tenant states that they wanted to leave the unit in good condition and would have solved the problem if they could have reached the Landlord and spoken to them however the Landlord was not responding to the Tenants.

The Landlord states that the unit was advertised online immediately upon receiving the Tenants' notice to end the tenancy for an occupancy date of September 15, 2015 and at the same rental rate. The Landlord states that they were unable to rent the unit until December 1, 2015. The Landlord claims unpaid rent of \$850.00 from September 2015. The Tenant states that they did not know what the notice requirements were beyond providing a month's notice which the Tenants did. The Tenant states that the Landlord never said that the notice was a problem and accepted the half rent for September 2015 without saying anything. The Tenant states that when trying to arrange the move-out inspection the Landlord never said anything about wanting more rent or making a claim for rent. The Tenant states that since the unit did not rent until December 2015 the loss was not caused by the Tenants actions.

Analysis

Section 35 of the Act provides that 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 and the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36 of the Act provides that 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 offer 2 opportunities for inspection.

Although I accept that the Landlord's personal circumstances restricted their ability to carry out their obligations in relation to a timely move out inspection there was no evidence to support that an agent could not be obtained to carry out this task. The Landlord's evidence indicates that the move-out inspection was conducted by the Landlord before the Tenant was offered the date of September 30, 2015. The Landlord's evidence also shows that the Tenant accepted the Landlord's second offer for a convenient inspection date. In turning this date down the Landlord should have then offered another opportunity. For these reasons I find that the Landlord failed to offer the Tenant two opportunities for a move-out inspection and as a result the Landlord's right to claim against the security deposit was extinguished at move out. At this point the Landlord was required to return the security deposit to the Tenants upon receipt of the Tenants' forwarding address.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and

- (b) 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 53 of the Act provides that an incorrect effective date for a notice to end tenancy is automatically changed to comply with the required amount of notice. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement.

As the rent was payable on the first day of each month and as the Tenant's notice to end tenancy given on August 15, 2015, I find that the effective date for moving out of the unit was automatically corrected to September 30, 2015. I also accept that the Landlord acted reasonably to mitigate its losses claimed by advertising the unit immediately and it can be reasonably anticipated that the availability of tenants for a mid-month start would not be great. As the Tenant failed to pay full rent for this month I find that the Landlord has substantiated an entitlement to **\$850.00**.

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. In a claim for damage, the party claiming costs for the damage must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Given the undisputed evidence that the Tenants used the paint supplied to them by the Landlord, accepting the Tenant's persuasive evidence that the paint was stirred, I find that the Landlord has not substantiated that the Tenants caused the newly painted areas to be different from the rest of the walls. I therefore dismiss the claim for costs to paint the unit.

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. Although the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-out the Landlord's right to otherwise claim against the security deposit remained open. As the Landlord's application included a valid claim for unpaid rent and as the Landlord made its application within 15 days receipt of the Tenants address, I find that the Landlord is not required to pay the Tenant double the security deposit.

As the Landlord's application has met with some merit I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$900.00**. Deducting the security deposit of **\$750.00** plus zero interest leaves **\$150.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$150.00**. 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: May 6, 2016

Residential Tenancy Branch