



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

This hearing was reconvened 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; and
3. 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

The Tenant states that she did not receive full particulars of the Landlord's claim in the 17 page evidence package received. The Tenant states that there are no photos and no receipts. The Landlord states that she sent the Tenant the same package as was provided to the Residential Tenancy Branch (the "RTB") and that the package contained 34 pages. It is noted the Landlord provided a 50 page evidence package to the RTB that contains numerous photos and receipts.

Rule 3.7 of the RTB Rules of Procedure provides that identical evidence packages of documents and photos must be served on the Respondent and the RTB. Given the Landlord's evidence of the number of pages served to the Tenant and considering the number of pages given to the RTB, I find that the Landlord's evidence of the contents of its package sent to the Tenant is not credible. I therefore prefer the Tenant's evidence that no receipts and no photos were provided to the Tenant and decline to consider the photos and receipts that are in the RTB evidence package.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on May 1, 2015. Rent of \$2,500.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as security deposit and \$1,250.00 as a pet deposit. The Tenant did not pay any rent for August 2015.

The Landlord states that the Tenant moved out of the unit on August 22, 2015. The Tenant states that the Tenant moved out of the unit on August 19, 2015 while the police were present. The Tenant states that the Landlord was restrained from being around the Tenant and was not present at the time as the police wanted to take the Landlord for a psychiatric assessment. The Tenant states that the keys to the unit were left on this date while the police were still present. The Landlord states that the Tenant called the police and accused the Landlord of threatening to kill the Tenant and that the Tenant told the police she would be gone from the unit by August 22, 2015. The Landlord states that no keys or the remote were returned. The Landlord claims unpaid rent for August 2015.

The Landlord states that the Parties mutually conducted a move-in inspection with a complete report that the Tenant signed. The Landlord states that the Tenant was immediately given a copy of that report. The Tenant states that no move-in inspection was conducted. The Landlord states that her lawyers called the Tenant three times to offer a move-out inspection but that the Tenant refused. The Landlord states that she does not know when these calls were made and that the lawyer's receptionist made the calls. The Tenant states that no move-out inspection was offered.

The Landlord states that the Tenant left urine in the oven of the stove that was 3 years old and that the police told the Landlord to throw the stove out so the Landlord took it to a dump. The Landlord states that a new stove was purchased sometime in the middle of September 2015 when her son moved into the unit. The Landlord does not know how much was paid for the stove. The Landlord claims \$1,285.76. The Tenant states that the Landlord's evidence of urine in the stove is absurd, that the stove was brand new at the start of the tenancy and was left in spotless condition.

The Landlord states that the handles, locks and wheels of the patio doors were left smashed. The Landlord states that these have not been repaired as the Landlord cannot afford the cost. The Landlord claims \$401.80. The Tenant states that during the tenancy the Landlord broke into the unit a few times breaking the door knob at the front of the house. The Tenant states that this matter was dealt with in a previous hearing where the Tenant was awarded compensation. It is noted that the Decision dated September 4, 2015 was reviewed and there is nothing in that Decision dealing with the patio doors. The Tenant states that locks were present on the patio doors when she moved out of the unit.

The Landlord states that her lawyers would not allow the Landlord to enter the unit and that the house was all locked up. The Landlord states that her lawyers insisted that the

locks be changed after the Tenant moved out as the unit is a “multi-million dollar property”. The Landlord states that the Tenant did not leave any keys and that the Landlord could only enter the unit with the Landlord’s keys. The Landlord claims \$304.33. The Tenant states that she did nothing to cause the Landlord to change the locks and that the Landlord contradicts her own evidence about not being able to enter the unit and finding the patio doors unsecured. The Landlord states that it was not until the Landlord let herself into the unit that she discovered the patio doors smashed.

The Landlord states that the shower heads from the master bedroom and kids’ bedroom were missing at the end of the tenancy. The Landlord states that the boiler located in the garage was vandalized and not running. The Landlord states that the Tenant damaged the boiler. The Landlord states that the repairs were minor and claimed \$194.25 for the costs of the repair person’s time to replace the shower heads and restart the boiler. The Tenant states that there were no shower head present at move-in but that during the tenancy a hydro company did an energy efficient inspection of the unit and put in energy efficient shower heads. The Tenant states that she has no idea about damage to the boiler but that during the tenancy there was no hot water for a period of time and that the Landlord had it repaired in June 2015. The Landlord states that the utility company did install expensive shower heads and other things to upgrade the unit.

The Landlord states that the entire built in vacuum system was missing at the end of the tenancy and that there was no hose or power head. The Landlord states that even the police observed this loss and took photos. The Landlord states that the system was present many years ago when the Landlord moved into the unit and that the hoses were replaced in the last few years. The Landlord claims \$782.83. The Tenant states that she has no idea what the Landlord is referring to and denies the claim.

The Landlord states that all the carpets were stained with urine and that the Tenant failed to clean the carpets at move-out. The Landlord states that the carpets were immediately cleaned but that the cleaner told the Landlord they require replacement. The Landlord states that she thinks the carpets are about 7 years old. The Landlord states that the carpets have not been replaced as she cannot afford the cost. The Landlord claims \$10,619.95 as the cost to replace the carpets and underlay. The Tenant states that unit was not clean at move-in and formed part of her earlier claim against the Landlord. The Tenant states that she cleaned the carpets in July 2015 but was not able to remove the dirt. The Tenant states that the carpets were very old stained and dirty and that the Landlord had agreed at the outset of the tenancy that the Tenant could replace the carpets with laminate at the Tenant’s expense.

The Landlord states that a mini fridge was missing and taken by the Tenant. The Landlord states that she replaced the fridge and claims \$268.79 for the cost. The Tenant states that there was no mini-fridge at move in but the Landlord did say that she was going to give the Tenant a mini fridge that the Landlord had if the Tenant wanted to sublet an area of the unit. The Tenant states that no fridge was ever provided to the Tenant.

The Landlord states that the Tenant removed all the curtains and left only the damaged blinds in the office. The Landlord states that the Tenant removed just the rods, brackets and living room curtains. The Landlord states that the landlord is only claim the loss of the living room curtains. The Landlord states that she only replaced the rods and brackets as her son purchased the curtains for the room. The Landlord claims \$223.69. The Tenant states that the Landlord and the Tenant removed the living room curtains when the unit was initially viewed because they were torn and that the rods and brackets were there at move-out.

The Landlord state that the Tenant failed to leave the unit clean, had removed all the door knobs and light fixtures, and left rooms full of garbage. The Landlord states that she had to clean this up before the commercial cleaners would clean the unit. The Landlord claims \$300.00 for her labour costs. The Landlord claims additional cleaning costs incurred by a cleaning service in the amount of \$378.00. The Tenant states that she did not remove any door knobs and that she moved out of the unit with only one day's notice so did not have time to remove everything but that no garbage was left beyond that placed in the city garbage bins. The Tenant states that the unit was not clean at move-in and that the unit was left clean at move-out.

The Landlord states that a very valuable vintage butcher block that was bought many years ago was missing at the end of the tenancy. The Landlord states that this has not been replaced and claims \$4,932.01. The Tenant states that the butcher block was present at the onset of the tenancy but that the Landlord's son and his two friends removed it within 2 weeks of the tenancy because the Tenant did not want it. The Tenant states that it was placed in the Landlord's barn entrance and plants were placed on it. The Landlord states that she would never put it in the barn and that it was in excellent condition.

The Landlord states that the Tenant smashed a bathroom sink and left a huge crack. The Landlord states that the sink was in place for the 28 years that the Landlord had the unit. The Landlord states that the sink has not been replaced and claims \$652.00.

The Landlord states that the tenancy agreement requires the Tenant to be responsible for yard maintenance. The Landlord also states that the Tenant verbally agreed to maintain the yard and that there was no agreement that the Landlord would maintain the yard. The Landlord states that the Tenant left the yard in a mess and that this was cleaned up by the Landlord and her son. The Landlord claims \$852.00 and bases this amount on an estimate from a gardener. The Tenant states that there was no requirement to maintain the yard and that the Landlord, using a riding lawnmower, only mowed the lawn twice during the tenancy. The Tenant states that the yard was left in better condition at move-out than it was at move-in.

The Landlord states that a patio set and 4 chairs were missing at the end of the tenancy. The Landlord states that she saw the Tenant sit and smoke at the table. The Landlord states that they were not replaced and claims the replacement cost of \$263.00. The Tenant states that there was no patio set provided with the unit. The Tenant states that she does not smoke.

The Landlord states that although they had the carpets cleaned they were left with fleas. The Landlord states that they had a pest control company attend and claims their cost of \$278.80. The Tenant states that the carpets were cleaned a month before move-out.

The Landlord states that during the tenancy the Tenant would turn the power off and on and that as a result the Landlord had to buy a generator to obtain power to the Landlord's residence in the barn. The Landlord states that the barn was previously hooked up to the Tenant's power source and that the Tenant was required to pay for the power. The Tenant states that the Tenant was not required to pay for the Landlord's use of power and that the Landlord used an extension cord to obtain power from the Tenant's outlets which would cause the breaker to blow. The Tenant states that the electricians who came to the unit in relation to this problem told the Landlord that it was illegal to hook up her electricity this way and they shut off this source for the Landlord's power.

The Landlord states that the Tenant never provided a forwarding address and that the Landlord used an agency to find the Tenant. The Tenant states that her forwarding address in BC was given to the Landlord a few days after the Tenant moved out and the forwarding address in Alta was given to the Landlord at the original hearing on this matter.

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. Based on the undisputed evidence of the terms of the tenancy agreement in relation to rent and on the undisputed evidence that rent for August 2015 was not paid I find that the Landlord is entitled to **\$2,500.00**.

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, 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. Given the lack of a receipt indicating that a new stove was purchased and considering the Tenant's credible evidence of the age of the stove and denial of the damage, I find that the Landlord has not substantiated that the Tenant did any to cause the stove to be replaced or that the stove was replaced.

It may be that the patio door locks were broken however given the inconsistent evidence of the Landlord and considering that some time elapsed between the Tenant's departure and the Landlord's attendance at the unit a few days later, I find that the Landlord has not substantiated that the Tenant caused the doors to be damaged and I dismiss the claim for repair of the patio door. Given the equally confusing and inconsistent evidence in relation to the keys to the unit and accepting the Tenant's preferred evidence that the keys were left I find that the Landlord has not substantiated that the Tenant breached the Act or tenancy agreement and I dismiss the claim for the replacement of locks..

Given the lack of an invoice for shower head replacement costs and considering that the Landlord did not incur a cost for the shower heads in the first place, I find that the Landlord has not substantiated a loss or the costs claimed in relation to the shower and boiler and I dismiss this claim.

I find the Landlord's evidence of loss of the entire vacuum system to be exaggerated and conflicting and therefore not credible. For these reasons and given the Landlord's vague evidence in relation to the age of the system and the date of parts being replaced, I find that the Landlord has not substantiated that the Tenant caused any loss in relation to the vacuum system and I dismiss the claim.

Although I accept that the Tenant cleaned the carpets during the tenancy, given the undisputed evidence of having two dogs, I find that reasonable cleaning at the end of the tenancy also requires a cleaning of the carpets at the end of the tenancy. Given the lack of an invoice for the cost of pests, I find that the Landlord has not substantiated a pest cost and I dismiss this claim. As the Landlord provided no receipts to support the replacement of carpets and accepting the Tenant's evidence of the age of the carpets I

find that the Landlord has failed to establish either a lost value or an incurred cost I dismiss the claim for the replacement of the carpets.

Given the lack of an invoice indicating the replacement cost of a mini-fridge, I dismiss this claim.

Given the multiple different and conflicting statements by the Landlord in relation to the curtains I find that the Landlord's evidence is not credible and I therefore prefer the Tenant's evidence that no curtains or curtain parts were damaged or removed by the Tenant and I dismiss the Landlord's claim for costs to replace these items.

Given the Tenant's evidence of the fast move-out I accept that the unit was likely left unclean. However given the lack of photos and the Tenant's evidence that no garbage was left behind I find that the Landlord has only substantiated a nominal amount of **\$300.00** for the cost of cleaning that part of the unit that the Tenant left items in.

Given the vague evidence of the age of the butcher block I find that the Landlord has not substantiated the amount of loss. However even if the Landlord did substantiate a monetary value for the butcher block, I accept the Tenant's very plausible evidence of it having been removed by the Landlord's son and I therefore find that the Landlord has not substantiated that the Tenant caused any loss. I dismiss the claim in relation to the block.

Given the age of the sink and considering that the Landlord has not incurred any cost to replace the sink I find that the Landlord has not substantiated any loss in relation to the sink and I dismiss the claim.

Given that there is nothing in the tenancy agreement that requires the Tenant to maintain the yard and considering the undisputed evidence that the Landlord mowed the lawn during the tenancy, I find that the Landlord has not substantiated that the Tenant breached the tenancy agreement. I therefore dismiss the claim for yard work.

I accept the Tenant's credible evidence of Landlord's use of the Tenant's electricity and as a result find that the Landlord has not shown that the Tenant did anything to cause the Landlord to purchase a power source for the Landlord's own use. I therefore dismiss the claim for the cost of the generator.

Given the Landlord's evidence that the patio chairs and table were not replaced, I find that the Landlord has not substantiated the costs claimed and I dismiss this claim.

As the Landlord's application has met with some success I find that the Landlord is entitled to recovery of the \$100.00 filing fee for a total entitlement of **\$2,900.00**. Deducting the Landlord's entitlement from the combined security and pet deposit of **\$2,500.00** plus zero interest leaves **\$400.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$2,500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$400.00**. 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: September 23, 2016

Residential Tenancy Branch