Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on January 28, 2016 for:

1. An Order for the return of double the security deposit - Section 38.

The Landlord applied on February 5, 2016 for:

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 Tenant and Landlords 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 the monetary amounts claimed?
Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on June 1, 2015 and ended by written mutual agreement on November 30, 2015. Rent of $950.00 was payable on the first day of each month. The

Parties mutually conducted a move-in inspection and completed a report. The Landlord provided a copy of the report to the Tenant.

The Landlord states that the Tenant paid only $455.00 of the security deposit as indicated on the tenancy agreement. The Tenant states that her previous roommate paid the remaining $20.00 in cash to the Landlord who issued a receipt. No copy of that receipt was provided by the Tenant.

The Landlord states that two opportunities, 1:00 p.m. and 7 p.m., were provided to the Tenant to conduct a move-out inspection for November 30, 2015 and that the Tenant agreed but was not present on either time. The Landlord states that these opportunities were given by text and the Landlord refers to her text evidence on page 17 of the evidence package. The Landlord states that the Tenant was given a third opportunity to attend December 1, 2015 and that the Tenant failed to attend. The Landlord states that it conducted the move-out alone and completed the report. The Landlord states that the Tenant provided it forwarding address with a witness present approximately early January 2016 following which the Landlord sent the Tenant a copy of the move-out report.

The Tenant states that the Landlord never gave any offers for a move-out inspection, that the Landlord only contacted the Tenant in relation to the keys and that the Landlord had wanted no contact with the Tenant since mid-November including no contact by text. The Tenant submits that no final offer for a move-out inspection was ever provided by the Landlord. The Landlord states that they were advised to keep contact with the Tenant to a minimum.

The Landlord states that they agreed to reduce the Tenant’s rent to $850.00 starting September 2016 on the basis of the Tenant’s agreement to make up the difference when the Tenant got another roommate. The Landlord states that because the lease was only 6 months the Landlord agreed as they otherwise might not have received any

rent. The Landlord states that the agreement for the reduction was only until the Tenant found a roommate. The Landlord claims $300.00 in unpaid rent.

The Landlord states that the Tenant damaged the stopper and drain for the tub and that this is not reparable. The Landlord states that the only option is to replace the 9 year old tub entirely. The Landlord states that the tub has not been replaced and that it continues to work as a tub. The Landlord states that the current tenancy has not been affected by the loss of the tub stopper as the current tenant does not take baths. The Landlord claims $250.00 for the depreciation of the tub and has no evidence of the amount that was originally paid for the tub. The Landlord has not provided any evidence of the cost of a new tub. The Tenant agrees that the stopper was damaged by the co-Tenant who is not a party to either application.

The Landlord states that the Tenant left the ceramic stove top damaged with gouges. The Landlord states that the damage is only cosmetic and that it was purchased new for $900.00 in 2013. The Landlord claims a loss of $250.00. The Tenant denies that any gouges were left on the stove top. The Tenant states that there are only a few lines on the stove top and that they were present at move-in.

The Landlord states that the Tenant left stains insider the fridge freezer compartment and that these stains cannot be removed. The Landlord claims $250.00 for the loss of aesthetic value. The Tenant does not dispute leaving the freezer with stains and states that although they tried several cleaning products the stains would not come out.

The Landlord states that the Tenant failed to leave the unit reasonably clean, including the carpet and that the Landlord cleaned the unit. The Landlord states that it took 16 hours to clean the 900 square foot, two bedroom, and one bath unit. The Landlord claims $450.00 for their labour and cost of cleaning supplies. The Landlord provided a DVD of the unit.

The Tenant states that they spent many hours cleaning the unit, that the carpets had been cleaned 2 months prior and again at the end of the tenancy. The Tenant stats that there were a few spots left on the blinds that were not cleaned and that after they puttied the walls the floors were vacuumed.

The Landlord states that the Tenant did not remove all her belongings until December 5, 2015. The Landlord states that the keys were found in the unit on that day. The Landlord states that they did not advertise the unit until sometime in January 2016. The Landlord claims lost rental income for December 2015. It is noted that the mutual agreement to end the tenancy was signed by the Parties on November 15, 2015.

Analysis

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.

Accepting that the Landlord agreed to the rental reduction until a roommate was found and repayment of the rental reduction when a roommate was obtained, but considering that the tenancy ended by mutual agreement before the Tenant could get a roommate I find that the Landlord has not substantiated that the Tenant breached any agreement in relation to the rent for September, October and November 2015. I therefore dismiss the claim for $300.00.

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. Given the lack of any evidence of the original or even replacement value of the tub and considering that the Landlord has provided no evidence of any rental loss in relation to the missing stopper, I find that the Landlord has not substantiated the amount claimed. As the Tenant agrees that some damage occurred by the co-tenant's act, I find that the Landlord has substantiated a nominal amount of **$50.00**.

A review of the Landlord's DVD shows at least one deep scratch on the top of the stove. Given that no scratches to the stove top were noted in the move-in report I accept that the Tenant left the stove top with some damage. Considering that the damage is only esthetic however and considering that the Landlord provided no supporting evidence of either the original or replacement cost for the stovetop I find that the Landlord has only substantiated a nominal amount of **$50.00** for the damage.

Given that there is no evidence that the operation of the freezer has been affected by the stains and considering that the view of the freezer is entirely hidden I find that the Landlord has not substantiated the amount claimed for loss of esthetic value and I dismiss the claim for $250.00.

As the Landlord knew as of November 15, 2015 that the unit would be empty for December 2015 and as the Landlord did not advertise the unit until sometime in January 2016 I find that the Landlord failed to take reasonable steps to mitigate any loss for December 2015 and I dismiss the claim for lost rental income.

Given the Landlord's video evidence I find that the Tenant's evidence of having cleaned the unit, including the carpet, to be credible. The video shows only very minor spots of unfinished cleaning and a minor amount of cleaning to an oven that is self-cleaning. There was only one small nail hole and a smudge on a wall depicted by the photos. I consider the amount of time claimed to clean and repair these minor areas to be vastly exaggerated or excessive. I therefore find that the Landlord has not substantiated the $450.00 claimed and I dismiss this claim

As the Landlord's application has met with minimal success I find that the Landlord is only entitled to recovery of half the $100.00 filing fee for a total entitlement of **$150.00**.

Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit is extinguished if the landlord does not give the tenant at least 2 opportunities to conduct a move-out inspection. Given the text evidence of the Landlord indicating on

December 1, 2015 that the Tenant did not attend the unit on the day prior at 7 pm, I accept that the Landlord did offer one inspection time. The texts however do not indicate, directly or by implication, that any other offers were made. Considering the Tenant's credible evidence that no final inspection notice of opportunity was ever given, I find that the Landlord failed to substantiate on a balance of probabilities that it offered at least two opportunities to the Tenant to conduct the move-out inspection. As a result I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished. The Landlord still maintained its right to claim against the Tenant for damage to the unit or to claim against the security deposit for losses not related to damage to 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.

Given the copy of the written tenancy agreement I find that the Landlord has substantiated on a balance of probabilities that it only collected $455.00 as a security deposit. Although the Tenant provided no evidence of the date the Landlord was given the forwarding address, based on the Landlord's evidence that this occurred in early January 2016 and given the date that the Landlord made its application I find on a balance of probabilities that the Landlord did not make its application within the time required. As a result I find that the Tenant is entitled to return of double the security deposit plus zero interest of **$910.00** (455 x 2).

Deducting the Landlord's entitlement of **$150.00** from the Tenant's entitlement leaves **$760.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$760.00**. 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 16, 2016

Residential Tenancy Branch