



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.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of a furnished unit started on April 1, 2011 and ended on December 17, 2015. Rent of \$1,400.00 was initially payable on the first day of each month and was increased to \$1,500.00 as of October 1, 2012 by way of a letter. The Landlord argues that the Tenant’s signed cheques are evidence of the Tenant’s agreement to the increase.

At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report and copy to Tenant. The Landlord made several offers to the Tenant for a move-out inspection and the Tenant failed to attend any of the offered opportunities. The Landlord completed the inspection and report. The Landlord obtained the Tenants forwarding address sometime in January 2016 to the Landlord's "best recollection".

The unit was listed for sale in February 2016 and was sold by March 15, 2016. The Landlord sold the unit without replacing the "condo inventory". The Landlord claims \$664.00 for the loss of items on the "condo inventory".

The Tenant left the carpets in the two bedrooms stained and damaged beyond repair. The carpets were replaced 6 years ago (2010). The Landlord claims \$1,206.58 as the costs to replace the damaged carpets.

During the tenancy the Tenant changed the locks to the unit without the knowledge or consent of the Landlord. When the Tenant moved out of the unit the Tenant notified the Landlord that the keys were left in the unit and that the unit was left unsecured. The Landlord claims \$92.100 for the cost of new locks.

The Tenant left the walls with some damages and the Landlord claims \$22.37 for the cost of paint. The Landlord cannot recall the last time the unit was painted.

The unit originally came with 6 chairs. The Tenant left 2 chairs in the unit damaged and 2 chairs were missing at the end of the tenancy. The Landlord claims the cost to replace two of the chairs in the amount of \$156.80. The Landlord provided photos of the chairs.

The Landlord claims \$51.48 for the replacement of a mattress cover and a decorative item that was left damaged.

The Landlord states that the Tenant left the 975 square foot unit unclean and that the Landlord cleaned the unit taking 40 hours. The Landlord claims \$800.00 for their labour. No invoice was provided. The Landlord states that the tile floors had to be scrubbed with a brush and that this took many hours. The Landlord claims \$12.98 for the cost of cleaning supplies and provides a receipt.

The Tenant was given 2 fobs at the outset of the tenancy and only returned one fob. The Landlord replaced the fob and claims \$50.00.

Analysis

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. 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 or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given that the Landlord did not replace any of the items listed as “condo inventory” and considering there is no other evidence to support any financial loss in relation to these items, I find that the Landlord has not substantiated that costs have been incurred and I dismiss the claims in relation to the condo inventory.

Residential Policy Guideline #40 sets the useful life of carpets at 10 years. Based on the Landlord’s evidence that the carpets were 6 years old when they were replaced and based on the undisputed evidence that the Tenant left the carpets damaged to the point

of requiring replacement, I find that the Landlord has substantiated a loss of 4 years of useful life. I find therefore that the Landlord has substantiated a loss of **\$482.63** ($1,206.58/10 \times 4$).

Based on the undisputed evidence that the Tenant replaced the locks to the unit without permission and that the Tenant left the unit unsecured at the end of the tenancy I find that the Landlord is entitled to its claim of **\$92.11** for the cost of the locks.

RTB Policy Guideline #40 sets the useful life of interior paint at 4 years. Given the length of the tenancy and the Landlord's lack of evidence for when the unit was last painted I find that the Landlord has not substantiated that the paint in the unit had any useful life left. As a result the Landlord has not shown that the Tenant caused any loss in relation to the paint and I dismiss the claim for the cost of paint.

Based on the Landlord's undisputed evidence of damage to the chairs, considering the photos that show damage, given the invoice for the purchase of 2 chairs when another 2 were also missing I find that the Landlord both mitigated its costs being claimed and substantiated an entitlement to **\$156.80** to replace two chairs.

Based on the Landlord's undisputed evidence of damage and given the invoice I find that the Landlord has substantiated its claim for the mattress cover and decorative item in the amount of **\$51.48**.

Given the photos and considering the size of the unit, I find that the Landlord's claim for cleaning is excessive in the extreme and that the cleaning undertaken was more likely done to a higher standard than required under the Act in order to sell the unit. I also note that there is no invoice for this amount indicating any included labour time spent on repairs. Further if the Landlord did scrub the floors with a brush and given that there is no evidence that the Landlord could not have obtained a floor scrubber instead, I would consider the Landlord to have failed to take reasonable measure to mitigate costs for cleaning times. However given the Landlord's undisputed evidence that the Tenant

failed to leave the unit reasonably clean I find that the Landlord has substantiated a nominal amount of **\$200.00** for the cost of cleaning the unit. Given the receipt I find that the Landlord is also entitled to the cost of cleaning supplies of **\$12.98**.

Based on the undisputed evidence of the Landlord I find that the Landlord has substantiated that the Tenant failed to return a fob. I find therefore that the Landlord has substantiated its claim to **\$50.00**.

Section 36(1) 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 at least 2 opportunities for an inspection and the tenant has not participated on either occasion. Based on the Landlord's undisputed evidence that more than 2 opportunities were given to the Tenant to attend a move-out inspection and that the Tenant failed to attend any inspection I find that the Tenant's right to return of the security deposit was extinguished at move-out. The Landlord is therefore entitled to retain the security deposit plus zero interest of **\$700.00**. This amount will be set off against the Landlord's final entitlement.

Section 42 of the Act provides that a notice of a rent increase must be in the approved form. Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

Section 43 further provides that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. A signature on a cheque is not evidence of an agreement by the Tenant in writing to a rent increase. Given the Landlord's evidence of an increase in rent that was not given on the required form or in the amount allowed under the Act I find that the

Landlords were not entitled to collect the extra \$100.00 from October 1, 2012 onward. The extra rent for the period October 1, 2012 to September 30, 2015 inclusive amounts to **\$3,600.00** to be deducted from the Landlord's final entitlement.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence that the Tenant failed to pay rental arrears for October 2015 and paid nothing for November and December 2015 rent, and considering that the rent for these months would be based on the original rental rate set out in the tenancy agreement I find that the Landlord is entitled to \$400.00 for October 2015 rent and \$1,400.00 for each of November and December 2015 rent for a total rental entitlement of **\$3,200.00**. As the Landlord's application has been primarily successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,346.00**.

Deducting the rent overpayment of **\$3,600.00** and setting off the **\$700.00** security deposit from this total entitlement leaves **\$46.00** owed to the Landlord.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$46.00**. 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: October 14, 2016

Residential Tenancy Branch

