



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 8, 2016. The Landlord filed seeking a Monetary Order for: damages to the unit, site or property; to keep the security deposit; money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the application and notice of hearing documents. Each person confirmed receipt of the evidence served by the other party. Each party affirmed they served the other with copies of the same documents and photographs that they had served the Residential Tenancy Branch (RTB). No issues regarding service or receipt were raised. As such, I accepted the submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation for repairs and cleaning of the rental unit?

Background and Evidence

The Landlord submitted evidence that the Tenant had occupied the rental unit starting on July 1, 2013 based on a previous fixed term written tenancy agreement. Subsequent tenancy agreements were entered into with the last tenancy commencing on July 1,

2015 and ending on June 30, 2016. Rent, as per the last tenancy agreement, was payable on the first of each month in the amount of \$3,000.00. On July 1, 2013 the Tenant paid \$1,500.00 as the security deposit.

In April 2016 the Tenant informed the Landlord that they would be vacating the rental unit at the end of the fixed term, June 30, 2016. The parties completed and signed the move in condition inspection report form on July 1, 2013. The parties mutually agreed to complete the walk through on June 27, 2016 at approximately 7:00 p.m.; at which time they completed and signed the move out condition inspection report form. The Tenant provided his forwarding address on the move out condition inspection report form.

I heard the Landlord submit her evidence to support her claims for: \$100.00 to repair and paint walls in one of the bedrooms; \$83.03 to replace a broken shelf in the refrigerator; \$15.00 to replace unreturned keys; \$20.00 for the removal of garbage; and \$705.60 for additional cleaning.

In support of her application the Landlord submitted copies of the following: 48 photographs that were taken on June 27, 2016; a monetary order worksheet; a cleaning invoice dated 6/30/2016; receipts for keys; painting and fridge shelf; the condition inspection report form; and a duplicate of a cheque refunding \$576.37 of the security deposit to the Tenant on July 9, 2016.

It was noted that the Landlord had written amounts on the monetary order worksheet submitted into evidence that totaled \$1,168.49. However, the Landlord's application and initial evidence indicated she was claiming \$923.63. The Landlord stated that she had listed the full painting invoice amount of \$367.50 on the monetary order worksheet and she was only seeking to recover \$100.00 for painting.

I heard the Tenant stated that he was not disputing the Landlord's claims for: \$100.00 to repair and paint walls in one of the bedrooms; \$83.03 to replace a broken shelf in the refrigerator; and \$15.00 to replace unreturned keys.

The Tenant then confirmed he had left some articles behind at the rental unit. I then heard the Tenant state that if it cost \$20.00 to dispose of those articles then that is what it would cost.

The Tenant disputed the Landlord's claim of \$705.60 for additional cleaning of the rental unit. He argued that they mopped all of the floors; removed their things from the house; wiped all of the windows, walls, and window tracks; and cleaned the bathrooms and kitchen. Upon review of the Landlord's photographic evidence the Tenant stated that his wife cleaned the lower bathroom so he could not speak to the condition it was left in.

I heard the Tenant argue the Landlord's photographs were of very specific spots of the rental unit. He submitted the mildew was caked on hard in the window tracks as shown in the pictures. He stated those photographs were not a fair representation of the full 6

bedroom house. He said he was of the opinion that he could have cleaned the items displayed in the photographs in one afternoon by himself.

The Landlord argued the Tenant had initially agreed for her to have the rental unit cleaned and then argued over the amount it cost to have it cleaned. The Landlord confirm there were two people who cleaned the rental unit for a full day and then had to return for some touch up cleaning another day, free of charge. The Landlord stated the house had six bedrooms, 2 full kitchens, 2 full bathrooms, and was over 2100 square feet. She said she hired the professional company who were specialists in move out cleaning.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, undamaged except for reasonable wear and tear, and return all keys to the Landlord.

The Tenant did not dispute the claims for: \$100.00 to repair and paint walls in one of the bedrooms; \$83.03 to replace a broken shelf in the refrigerator; and \$15.00 to replace unreturned keys. The Tenant also confirmed he left articles behind that had to be disposed of, for which the Landlord claimed \$20.00. Accordingly, I grant the Landlord's application for **\$218.03**, pursuant to section 67 of the *Act*.

The fact the rental unit required additional cleaning was not in dispute. What was in dispute was the amount being claimed by the Landlord for that cleaning.

Based on the above, I find the Tenant was in breach of section 37 of the *Act*, leaving the rental unit requiring repairs and cleaning that were beyond normal wear and tear.

Policy Guideline 16 provides that the party making the claim for damages must satisfy each component of the following: the other party failed to comply with the *Act*, regulation or tenancy agreement; the loss or damage resulted from that non-compliance; the amount or value of that damage or loss; and the applicant acted reasonably to minimize that damage or loss. I concur with this policy and find it is relevant to the Landlord's application for Dispute Resolution.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept that the Landlord's photographic evidence did not provide a view of the full 6 bedroom, 3 bathroom house. I further accept that the condition inspection report form did not document every specific item that required cleaning as shown in the photographs. That being said, I accept the Landlord's photographic evidence was sufficient in proving the rental unit required additional cleaning to such an extent that the cleaning could not be completed by one person in an afternoon.

I accept the submissions of the Landlord that two people worked a full day to complete the cleaning on the large house. The Landlord submitted proof of the actual cost to have that cleaning completed which included a copy of the original invoice dated June 30, 2016 which charged \$48.00 per hour for 14 hours which is equal to seven hours for two people. Accordingly, I grant the Landlord's claim for cleaning costs in the amount of **\$705.60**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$1,500.00 security deposit since July 1, 2013. The Landlord submitted evidence that she returned \$576.37 of the Tenant's \$1,500.00 security deposit on July 9, 2016 and the Landlord retained the balance of \$923.63 pending the outcome of this Decision.

This monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the \$923.63 security deposit retained by the Landlord as follows:

Undisputed amounts for repairs/cleaning	\$ 218.03
Cleaning	705.60
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,023.63
LESS: Security Deposit \$923.63 + Interest \$0.00	<u>-923.63</u>
Offset amount due to the Landlords	<u>\$ 100.00</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$100.00, forthwith.

In the event the Tenant does not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$100.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord has succeeded with their application and was awarded monetary compensation of \$1,023.63 which was offset against the balance of the Tenant's security deposit retained by the Landlord, leaving a balance owed to the Landlord of **\$100.00**.

This decision is final, legally binding, and 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: January 13, 2017

Residential Tenancy Branch