



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application made on August 4, 2016 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 compensation for loss – 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 Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

On January 25, 2017 the Tenant provided an evidence package to the Residential Tenancy Branch (the “RTB”) but no copy was given to the Landlord. Rule 3.15 of the RTB Rules of Procedure provides that a respondent’s evidence must be received by the applicant not less than 7 days before the hearing. Given that the Tenant’s evidence was not provided to the Landlord until just before the hearing and considering the prejudice to the Landlord I decline to consider the Tenant’s evidence.

During the hearing the Parties raised an issue in relation to a fob deposit. The Tenant states that she paid a fob deposit and that an application made by the Tenant claiming damages and return of the security deposit has been scheduled for a future hearing. Although this current hearing will deal with the security deposit, as the fob deposit is separate from the security deposit and therefore not relevant, this issue is not addressed in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent or lost rental income?

Did the Tenant leave the unit unclean and damaged?

Is the Landlord entitled to the costs claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on March 20, 2105 and ended on June 15, 2016. Rent of \$1,275.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$637.50 as a security deposit. In a letter dated May 24, 2016 the Tenant gave the Landlord notice of ending the tenancy for June 15, 2016. On May 28, 2016 the Tenant provided a forwarding address to the Landlord.

The Landlord states that a move-in inspection was conducted with the Tenant on March 31, 2015 and a copy of the report was given to the Tenant. The Tenant states that no inspection was conducted and that the Landlord asked the Tenant to sign a completed condition report before she moved into the unit. The Tenant states that no copy of this report was provided to the Tenant. The Tenant states that the unit was basically clean with minor deficiencies.

The Landlord states that the Tenant called him on June 16, 2016 and said keys were left inside the unit. The Landlord states that he returned the Tenant's call that day and asked the Tenant to call him. The Landlord states that no offer for a move-out inspection time was left as a message. The Landlord states that he found the keys to the unit on the counter inside the unit. The Landlord states that he called back several times to have her return his call. The Landlord states that the move-out condition inspection was conducted by the Landlord that day without the Tenant present and that the place was a mess.

The Tenant states that she texted the Landlord several times on June 15, 2016 that she had moved out of the unit but no response was received. The Tenant states that because she the Landlord did not respond and because she could not leave the unit unlocked she left the keys and two fobs with the caretaker that was on site. The Tenant states that she did not receive any calls from the Landlord until three weeks later. The Landlord states that the move-out report

was done on June 16, 2016 and a copy was mailed to the Tenant. The Landlord provides a copy of the report indicating the inspection and report took place on June 17, 2016.

The Landlord states that the carpet in the bedrooms was not cleaned at move-out. The Landlord claims \$131.50 for the cost of this cleaning. The Tenant states that the carpets were cleaned on June 13, 2016 but that the Tenant no longer has the invoice for this cost as it was given to a 3rd party previously who had been acting for the Tenant in this dispute. The Tenant named the company that did the cleaning.

The Landlord states that a patio and window screen was left damaged by the Tenant and the Landlord had them replaced. The Landlord claims \$48.16 and provides an invoice of costs dated July 13, 2016. The Tenant states that there were no torn screens in the unit.

The Landlord states that the Tenant left a dryer knob missing at the end of the tenancy and that the Tenant did not inform the Landlord of any loss of a knob. The Landlord states that he purchased a new knob and claims \$36.96. An invoice was provided for this cost. The Tenant states that the knob was missing at the outset of the tenancy and that the Tenant simply used the knob from the washing machine to operate the dryer. The Tenant states that the knobs were easily switched. The Landlord states that the knobs for the machines are different sized.

The Landlord claims \$200.00 for cleaning the unit and making repairs. Of this amount the Landlord states that cleaning was undertaken for 5.5 hours to the inside and outside of the windows, sweeping of the outdoor patio and removal of two garbage bags, cleaning the aluminum blinds and cleaning under the appliances that had no wheels. The Landlord states that 4.5 hours were spent on rehanging two doors that the Tenant has replaced without permission and replacing a broken glass fridge shelf and a stove element. The Landlord also claims for the costs of the fridge shelf and element both of which were purchased at a second hand store for about \$10 or 15.00 each. No receipts were provided for the fridge shelf and element.

The Tenant states that the unit was left immaculate and cleaner than it was provided to the Tenant. The Tenant states that she only replaced one door that had a hole in it from the outset of the tenancy.

The Landlord states that the Tenant smoked in the unit contrary to the tenancy agreement and as a result the walls required painting. The Landlord states that washing the walls was not attempted as the smoke stains could not be washed off. The Landlord states that the unit was last painted sometime in 2014. The Landlord claims the costs of labour and supplies. The Tenant states that she did not smoke in the unit and only smoked on the deck. The Landlord states that he witnessed the Tenant's husband smoking in the living room on one occasion that the Landlord attended the unit. The Tenant states that the walls at the onset of the tenancy did not appear to have been painted the year prior and had scratches and marks. The Tenant states that the Landlord told her at the outset of the tenancy that the walls had been recently painted and no further painting would likely occur for a year.

The Landlord states that the Tenant failed to provide a full month's notice to end the tenancy. The Landlord states that the unit was initially advertised in March 2016 and for each month thereafter at a rate of \$1,375.00 and that a new tenant was found for July 1, 2016. The Landlord claims \$637.50.

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. 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.

Although the Tenant's notice to end tenancy should have been for the end of June 2016, as the Landlord advertised the unit asking for an increased rental amount I find that the Landlord failed to take steps to mitigate the loss claimed for the half month of June 2016. I therefore dismiss the claim for lost rental income.

Given the Tenant's signature on the condition inspection report I find that the Landlord has substantiated that the Tenant agreed with the notations on the report and therefore the condition of the unit. I do not find the Tenant's evidence that the report was signed in advance of the move-in to be relevant to the dispute over the state of the unit at the end of the tenancy. Although the Landlord states that he attempted to contact the Tenant after the Tenant moved out the Landlord also states that he did not leave any offer for a move-out date or time as a voice message. As there was no tenant waiting to move into the unit I also consider the Landlord's move to inspect the unit alone the same day to be pre-emptive and designed to exclude the Tenant's participation. As such I find that the Tenant was not provided any opportunity to conduct a move-out inspection. As a further result I do not consider the move-out report to be helpful in support of the Landlord's oral evidence of an unclean and damaged unit.

Considering the lack of photo evidence from the Landlord and given the Tenant's equally plausible oral evidence that the unit was left clean I find that the Landlord has not provided sufficient evidence to substantiate its claims for costs of cleaning including the carpet.

Although the Landlord's oral evidence is that of smoking in the unit causing the walls to be stained, I consider the undisputed evidence of the Landlord's expectation at the outset of the tenancy to paint the unit a year later and the Landlord's evidence of no attempt to wash the walls. As such I find that the Landlord has not substantiated on a balance of probabilities that the Tenant caused the walls to require painting. I therefore dismiss the claims for painting the unit including the cost of supplies.

As the Landlord's evidence is that a subsequent tenancy started on July 1, 2016 and noting that the screens were purchased sometime after the start of that tenancy and considering the Tenant's evidence that the screens were not damaged at move-out I find that the Landlord has not substantiated that the Tenant caused any damage to the screens.

As there is no missing knob noted on move-in report I find that the Landlord has substantiated that the Tenant by act or negligence caused the knob to be missing. Given the invoice I find that the Landlord has substantiated an entitlement to the costs claimed of **\$36.96**.

Given that there are no photos of damage to a fridge shelf, considering the lack of receipts to determine the date of replacement of a stove element and considering the Tenant's evidence that there was no damage at the end of the tenancy, I find that the Landlord has failed to provide sufficient evince to establish on a balance of probabilities an entitlement to the compensation claimed. I dismiss these claims.

Given the lack of photos of damage to two doors and the Tenant's evidence of repairing one door, I find that the Landlord has only substantiated on a balance of probabilities that the Tenant left one door damaged. As the Landlord's claim for repairs does not itemize the repairs and as the tenant has not been found to have caused some of those damages, I find that the Landlord has only substantiated an entitlement to a nominal amount of **\$50.00** for the labour to rehang the door. As the Landlord's application has met with minimal success I decline to award recovery of the filing fee to the Landlord. The Landlord's total entitlement is **\$86.96**.

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. Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Based on undisputed evidence that the Landlord received the Tenant's forwarding address before the end of the tenancy I find that the Landlord had 15 days from the end of the tenancy to either return the security deposit or make an application to claim against it. As the Landlord's application was made greater than 15 days after the end of the tenancy I find that the Landlord must pay the Tenant double the security deposit plus zero interest in the amount of **\$1,275.00**. Deducting the Landlord's entitlement of \$86.96 from this amount leaves **\$1,188.04** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,188.04**. 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: February 17, 2017

Residential Tenancy Branch