



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, RPP, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords applied on August 12, 2016, with an amendment made January 30, 2017 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on January 10, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to return personal property - Section 65;
3. An Order for the return of double the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on October 1, 2013 and ended on July 31, 2016. Rent of \$2,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit and \$550.00 as a pet deposit. The Parties mutually conducted a move-in condition inspection and filled out a report with a copy given to the Tenant.

The Tenant states that although the Landlord invited the Tenant to conduct a move out inspection on July 31, 2016 and that although the Tenant was present at the unit when the Landlords attended to conduct the move-out inspection, the Landlord did not invite the Tenant along for the inspection and did not complete a report or offer a report for signature by the Tenant on that date. The Tenant states that the Landlord conducted the inspection themselves for about a half hour and then came out, shook the Tenant's hand and verbally informed the Tenant that they were happy with the unit's condition and that the security deposit would be returned to the Tenants. The Tenant states that the Landlord followed up the next day with text informing the Tenants that the security deposit would be returned. The Tenant provides a copy of that text dated August 1, 2016. The Tenant states that as a result of the Landlord's agreement on the state of the unit the Tenants did not take any photos of the unit. The Tenant states that their forwarding address was given to the Landlord by text on July 31, 2016 and in a letter send by regular mail on August 9, 2016. The Tenant claims return of double the security deposit and states that they are entitled to this as the Landlord does not have a valid claim and should have returned the deposits to the Tenants as promised.

The Landlord states that they do not know why the Tenant did not join them for the inspection. The Landlord states that the Tenant volunteered to step outside while the inspection was conducted. The Landlord states that the carpet was damp at the time of the inspection. The Landlord states that the report was being filled out when the Tenant and the other Landlord disagreed about damage to a screen door and that the Landlord did not have an opportunity after that to have the Tenant sign the condition report. The Tenant states that he left only after the Landlord and he agreed to a full refund of the

security deposit. The Tenant states that he saw the Landlord filling out a report and thought it strange that the Landlord did not ask the Tenant to sign the move-out report. The Landlord states that the Tenant was not asked to return and sign the report. The Landlord states that the email from the Landlord dated August 6, 2016 that states “. . . we have now completed a comprehensive inspection of the property . . . upon closer inspection it became clear that cleaning of other areas was not sufficient.” The Landlord states that cleaning shortfalls and damages were not discovered until they moved into the property on August 3, 2016. The Landlord states that the photos of the unit provided by the Landlord as evidence of the state of the unit were taken on August 3, 2016. The Landlord states that a copy of the move out report was sent to the Tenant with the application materials on August 19, 2016 by registered mail.

The Landlord states that the Tenants failed to leave the unit clean and undamaged and claims as follows:

- \$360.00 for the cost of cleaning the unit, invoice provided. The Landlord provides a receipt, dated August 11 to 25, 2016 and a letter from the cleaner, dated January 24, 2017. The letter sets out the state of the kitchen, bathroom and walls and indicates that extra cleaning had to be done to the unit as “I had to get the house cleaned for move-in condition”;
- \$44.00 for the cost of repairing a vacuum outlet, shower head and stopper. The Landlord states that a kitchen stopper was missing, the shower head was cracked and duct taped and that the door hinge for the wall vacuum was broken. The Landlord states that these items were new in 1998;
- \$150.00 for the cost of repairing a pocket door, invoice provided; and
- \$400.00 for wall repairs and painting.

The Tenants state that they had professional cleaners for the move-out and provided an invoice dated July 30, 2016 itemizing the cleaning done to the kitchen and bathroom. The Tenant also provides an invoice for carpet cleaning.

The Tenant states that washing the walls could not be done as the paint on the walls could not withstand the wiping. The Tenant states that the receipts provided by the Landlord for the cleaning costs are dated for the period August 11 to 25, 2016, after the Landlord moved into the unit. The Tenant states that the photos showing dust etc. are not time stamped and could have been taken at any time. The Tenant states that the Landlord's cleaning letter evidence sets out gross exaggerations of the state of the unit and that there none of the Landlord's photos verify the details contained in the letter. The Tenant states that they suspect the cleaning and repairs done to the house were to prepare the house for sale as the unit was listed for sale in October 2016 and sold in November 2016. The Landlord states that they lived in the unit to January 2017 and that the whole purpose for moving into the unit was to sell it.

The Landlord states that during the tenancy the Landlord had a sliding door repaired twice that had broken off the track. The Landlord states that although the Landlord made these first two repairs the Tenants were told that the Landlord would not assume the costs of repairs if the door was damaged again. The Landlord states that at the end of the tenancy the door was found again off the track and that the only way this could happen was by pushing on the door. The Landlord states that the same contractor was used for all the repairs to the door and that the door was new in 1998. The Landlord provides the invoice and claims \$150.00. The Tenant states that repairs by the same contractor were insufficient in the first two instances or that the door was flawed. The Tenant denies damaging the door.

The Landlord states that the walls had several nicks and scrapes and all the upper walls, the main living areas, were marked with red and blue markers. The Landlord states that although the Landlord originally was going to hire a contractor, the Landlord did the filling and patching herself and that they had the paint on hand. The Landlord estimates that it took her 6 hours for the repairs and states that \$25.00 per hour would be a reasonable rate. The Landlord claims \$400.00 but agrees that a total amount of \$150.00 would be reasonable.

Analysis

Section 36(2)(a) provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer 2 opportunities for an inspection. Section 36(2)(c) provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Based on the undisputed evidence of the Tenant's presence at the unit while the Landlords were conducting an inspection and the apparent agreement that the Tenant's participation was not required, I find that the Tenant did attend that inspection.

Given the Landlord's email dated August 6, 2016 and the lack of a Tenant's signature on the move out report I find on a balance of probabilities that the Landlord did not complete that inspection or any report on July 31, 2016 and there is no evidence that the Tenant was responsible for the cessation of the inspection. I further find that the actual and final inspection and report was completed without the Tenant's knowledge or requested participation. As such I find that, in effect, the Landlord did not make any offer to the Tenant to attend the actual move-out inspection and that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out.

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. As the right to claim against the security deposit was extinguished, the Landlord was required to return the security deposit to the Tenant within 15 days of the receipt of the forwarding address. The Landlord could still make its application to claim for damages left to the unit. As the Landlord did not return the security deposit I find that the

Landlord must now pay the Tenant double the combined pet and security deposit plus zero interest in the amount of **\$3,300.00**. As the Tenant's application has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,400.00**.

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. 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. As the Tenant did not participate in the move-out inspection and was not given a copy of the report to sign, I find that the contents of the inspection report do not carry a high probative value. The other photos depict minor cleaning misses and there are no photos of uncleanliness to the extent set out in the cleaning letter. I also consider that the cleaning occurred apparently after the Landlord moved into the unit, although I note that the cleaning letter indicates a requirement to clean for "move-in condition". This intervening factor of the Landlord's presence leaves some doubt about the cleaning done due solely to actions or negligence of the Tenants. For these reasons, considering the Tenant's cleaning receipt and given the Landlord's text dated August 1, 2016 I find on a balance of probabilities that the unit was left reasonably clean. I find therefore that the Landlord has not substantiated that the Tenant left the unit unclean and I dismiss the claim for cleaning costs.

RTB Policy Guideline #40 "Useful Life of Building Elements" sets the life of indoor paint at 4 years and a door at 20 years. Given the advanced age of the door and considering that the door was repaired twice before, I find that the Landlord has not on a balance of probabilities substantiated that the Tenant caused the door to fall off the tracks by any act or negligence. I consider that the damage was more likely due to wear and tear or repair incompetence. I therefore dismiss the claim for the cost to repair the door. Given the 19 year old age of the kitchen stopper, shower head and vacuum hinge I find that no loss was incurred beyond reasonable wear and tear and I dismiss the claims for their replacement costs.

Given the photos I find that the Landlord has substantiated on a balance of probabilities that the Tenant failed to leave the walls undamaged. However given that the wall paint was 3 years old I find that the Landlord only lost 1 year of useful life. I therefore find that the Landlord is entitled to $\frac{1}{4}$ of the agreed reasonable labour costs of \$150.00 for a total amount of **\$37.50**. As the Landlord's claims have met with bare success, I decline to award recovery of the filing fee.

Deducting the Landlord's entitlement of **\$37.50** from the Tenant's entitlement of **\$3,400.00** leaves **\$3,362.50** owed to the Tenant by the Landlord.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$\$3,362.50**. 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