



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD

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 damage to the unit - Section 67;
2. A Monetary Order for compensation - 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. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed for cleaning the interior of the unit, the exterior windows and the yard?

Is the Landlord entitled to the monetary amount claimed for changing the locks?

Is the Landlord entitled to lost rental income?

Was the Landlord’s right to claim against the security deposit extinguished?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on March 1, 2016 and ended on November 15, 2016. Rent of \$1,000.00 was payable on the first day of each month.

At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. The Landlord received the Tenants' forwarding address on November 24, 2016. Although the Parties looked around the unit at move-in, the Landlord did not complete a move-in inspection report and provide a copy of that report to the Tenant. A move-out inspection was arranged for 1:00 p.m. on November 15, 2016.

The Landlord states that no move-out inspection occurred as the Tenant refused. The Tenant states that when they arrived 10 minutes late for the inspection the Landlord initially refused to do the inspection but was convinced to carry out the inspection by the Tenant's Witness. After hearing this evidence the Landlord agreed that the Witness and he entered the unit and looked at the place at move-out. The Landlord states that they could not carry out the inspection because the hydro had been disconnected and there were some rooms that were too dark for an inspection. The Landlord states he returned and took photos the next day. The Landlord was unable to state when the hydro was reconnected and states that it was connected within 24 hours or maybe the next morning or the day after or maybe immediately. The Landlord states that he does not recall when it was connected as he was busy at the time. The Landlord states that no move-out inspection report was completed by the Landlord.

The Landlord states that the Tenants failed to return all the keys to the unit. The Landlord states that they had to change the locks and the Landlord claims the costs of \$30.81. It is noted that the invoice provided for this claim sets out that the lock came with 2 keys for \$20.00 and that the Landlord incurred costs of \$7.50 for three extra keys. The Landlord states that he did not check the bill and only told the seller just to give him the keys. The Tenant states that they received only one key at the outset of the tenancy and that they did return that key at move-out.

The Landlord states that all the windows in the unit were left dirty and that they hired a company to clean the windows both inside and out. The Landlord claims \$84.00 and provides a receipt. The Landlord provides one photo of a window. The Tenant states that they cleaned all the windows on the inside.

The Landlord states that the Tenants left the unit with no cleaning at all. The Landlord provides a few photos of the unit and states that these photos were only provided as examples and that they did not provide a photo of every area that was not clean. The Landlord states that a relative did the cleaning and claims the amount charged by that relative of \$350.00. The Landlord states that he does not know how many hours were taken to clean the unit or what the hourly rate for cleaning was. The Landlord states that the stove may or may not have had wheels but that the stove came out easily.

The Tenant states that the unit was all cleaned with the exception of under the stove which was forgotten. The Witness states that she cleaned the unit the day of the move-out and the toilet was left to the last as the Witness was going to throw the wash water down the toilet. The Witness states that because of the behavior of the Landlord the Witness left before the toilet could be cleaned and that the water was thrown away outside. The Witness states that the Landlord's photo of the bathtub shows a stain from the hard water that could not be removed. The Tenant provided photos of the unit.

The Landlord states that the Tenants left dog feces and a Christmas tree in the yard along with miscellaneous garbage around the unit. The Landlord provided photos of items under the deck. It is noted that the Landlord provided no photos of the yard. The Landlord states that that "we charge 45.00 per hour and we had the guys there for an hour." The Landlord claims the costs of \$94.50 and provides the receipt. The Tenant states that although they picked up after the dog, there may have been some feces left in the yard. The Tenant states that she never left any garbage at the unit and does not recognize any of their belongings amount the items depicted by the photo of under the deck. The Tenant states that she never looked under the deck before, during or at the end of the tenancy and the area cannot be seen unless a person gets on their knees.

The Landlord states that the Tenants failed to leave the unit by 1:00 p.m. and in a clean state. The Landlord states that as a result the Landlord lost rental income and the Landlord claims \$500.00. The Landlord states that the unit was advertised for rent on

December 1 or 2 “or something like that”. The Landlord states that the unit was advertised “probably in the [local] paper” with availability for December 15, 2016 and at a rental rate of \$1,100.00. The Landlord states that they obtained a new tenant at that rental rate for December 15, 2016. The Landlord confirmed that in a previous Decision dated October 19, 2016 the Parties entered into a mutual agreement to end the tenancy for November 15, 2016.

Analysis

Section 24 of the Act provides that the right of a 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 make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that no move-in inspection was conducted I find that the Landlord’s right to claim against the security deposit for damage to the unit was extinguished at move-in. As the Landlord’s right was extinguished first there is no need to consider the evidence in relation to the move-out inspection and whether the Tenant’s right to its return was extinguished.

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. I consider that the Landlord’s photos of the unit show only a few minor cleaning misses. The Landlord provided no evidence of the time taken by its cleaner to clean the unit or the hourly rate for that cleaning. The Landlord gave oral evidence that it took one hour to clean the yard and yet provides a bill of costs for at least two hours. I do not consider the Landlord’s evidence of costs for cleaning and garbage removal to be reliable or credible. I find that the Landlord has therefore failed to substantiate that the costs claimed were incurred and I dismiss the claims for cleaning of the unit and the yard.

The Landlord provides no supporting evidence such as a notation on a move-in report of the number of keys provided to the Tenants at the onset of the tenancy. The Tenant gave plausible evidence that they were only given the one key and returned one key. For these reasons I find on a balance of probabilities that the Landlord has failed to substantiate that the Tenant did anything to cause the Landlord to change the locks. I therefore dismiss the Landlord's claim for lock costs.

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 costs have been established. Policy Guideline #1 provides that the landlord is responsible for cleaning the outside of the windows, at reasonable intervals. Given the Landlord's photo I consider that the Tenant left at least one interior window unclean. However given that the invoice does not identify the costs for cleaning the exterior of the windows for which the Tenant is not responsible I am unable to determine any costs for the cleaning of any of the internal windows. I find therefore that the Landlord has failed to establish the costs claimed for the cleaning of the windows and dismiss the claim.

Section 62(4) of the Act provides that part of an application for dispute resolution may be dismissed if the part is frivolous. Although the Landlord attributes its lost rental income to the Tenant's departure time and the state of the unit, the Tenant moved out on the required date in compliance with the mutual agreement and I do not consider a 10 minute late showing for a move-out inspection to be evidence that the Tenant acted contrary to the mutual agreement. Further there was no tenant waiting to move into the unit and the minor cleaning could reasonably have been done within a day. I find that the Landlord has not substantiated that the Tenants did anything or failed to do anything that caused the unit not to be rented in November 2016. Further, the Landlord did nothing to mitigate any rental losses such as advertising the unit in October 2016 when the parties entered into the mutual agreement to end the tenancy. As there is no merit whatsoever to this claim I find it to be frivolous and I dismiss it. As none of the Landlord's claims have met with success I decline to grant recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

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 that where the landlord's right to claim against the security deposit has been extinguished the landlord retains the right to claim for other damages such as lost rental income. However "if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process" return of double the security deposit will be ordered. As the Landlord's claim for lost rental income has been found to be frivolous, as the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in and as the Landlord did not return the security deposit to the Tenant I find that the Landlord must return double the security deposit plus zero interest of **\$1,000.00** to the Tenants.

Conclusion

The Landlord's application is dismissed. I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. 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: June 23, 2017

Residential Tenancy Branch