



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, OPN, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on April 4, 2017 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 1, 2017 for:

1. An Order to retain the security deposit - Section 38;
2. A Monetary Order for damage to the unit - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order of possession - Section 55; and
5. 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. Given that the tenancy ended before the Landlord made its application I dismiss the claim for an order of possession.

Issue(s) to be Decided

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

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are agreed facts: The tenancy started on December 1, 2012 and ended on December 31, 2016. The person identified as Tenant LL moved into the unit and as of June 1, 2015 the original rent of \$770.00 payable on the first day of each month was increased to \$820.00. The existing written tenancy agreement was not changed to add Tenant LL to the agreement as a tenant. At the outset of the tenancy the Landlord collected \$385.00 as a security deposit. The Parties mutually conducted a move-in condition inspection with the report copied to the Tenant. The Tenant provided its forwarding address in March 2017. The tenancy agreement includes an Addendum within which section 6(c) provides that "at the end of this tenancy agreement, the tenant will deliver possession of this residential premises to the landlord in the same condition as at the start of the tenancy." Section 17(a) of the Addendum provides that "No rubbish, boxes, or papers shall be placed or left in the backyard, carport, parking areas or other common areas of the residential premises, except those areas designated for disposal." The Landlord has not returned the security deposit.

The Landlord states that he attended the unit on December 31, 2016 but the Tenants were not finished cleaning the unit. The Landlord states that no time was arranged for the Landlord to attend on that date. The Landlord states that he told the Tenant that he would return the next day and that the Tenants were gone. The Tenant states that no offers were made for a move-out inspection.

The Tenant claims return of double the security deposit.

The Landlord states that the Tenant left the unit damaged and unclean and claims as follows:

- \$144.90 for the cost of carpet and tile cleaning that the Tenant failed to leave clean, invoice provided;
- \$240.10 for cleaning and garbage removal or disposal, noted as the remainder of the security deposit; no invoice provided; and

- \$1,800.00 for lost rental income.

The Tenant states that the carpets were cleaned with a liquid cleaner and not steam cleaned. The Tenant states that the kitchen floor was scrubbed and the tiles were left cleaned. The Landlord states that the tiles were dirty behind the fridge that had wheels.

The Landlord submits that the Tenant did not clean any of the kitchen leaving stains in a cupboard. The Landlord states that the stove was left dirty and greasy and is not a self-cleaning stove. The Landlord states that the garbage left behind was broke down and placed in the garbage and recycling bins for which the Landlord had extra stickers. The Landlord states that it took at least 4 or 5 hours to deal with the garbage and to distribute recycling items at a depot. When asked to clarify this evidence the Landlord states that only a printer was taken to the recycling depot. The Landlord states that an entire day was spent cleaning the unit.

The Tenant states that the unit was cleaned. The Tenant states that the stove and oven were cleaned with soap and water and that pre-existing stains in the oven could not be removed. The Tenant states that all the windows that could be reached were cleaned. The Tenant states that the Landlord had left a large TV and module in front of the one window that is shown by the Landlord's photo as having a dirty sill. The Tenant states that this window could not be accessed by the Tenants for cleaning as the TV was impossible to move. The Tenant states that when the Landlord saw the unit on December 31, 2017 the Landlord was pleased with the clean state. The Tenant argues that the cleaning costs are excessive in relation to the minor cleaning misses. The Tenant states that the garbage was left in the disposal area as required by the tenancy agreement.

The Landlord states that due to the unclean state of the unit the Landlord was not able to rent it for January 2017. The Landlord states that the unit was advertised on an internet site at the end of February 2017. The Landlord states that although the unit

was advertised at a rental rate of \$1,100.00 they had to lower the rent to \$850.00 as the new tenant that took the unit for March 1, 2017 could afford the higher amount. The Landlord claims \$1,800.00 as lost rental income. The Landlord states that the Tenant originally gave written notice on November 22, 2016 to end the tenancy on November 30, 2016 and that after informing the Tenant that a full month notice was required the Tenant gave notice on December 9, 2016 that the tenancy would end on December 31, 2017.

Analysis

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. 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. As the tenancy agreement requirement to leave the unit as it was originally received is inconsistent with the Act's standard of reasonable cleanliness with allowance for reasonable wear and tear, I find that this requirement is not enforceable and that the Tenants are only obliged to leave the unit reasonably clean and that reasonable wear and tear from the onset of the tenancy is allowable.

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 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 the Tenant's evidence of not steam cleaning the carpet and considering the length of the tenancy I find that the Landlord has substantiated that the carpets were not left reasonably clean. Given that the only photo showing a soiled kitchen floor is of that behind the fridge I accept that the Tenants otherwise left the tiles clean and that the Landlord is not entitled to costs for cleaning the entire floor. As the invoice does not

distinguish between costs of the carpet cleaning and costs for the tiles I find that the Landlord has substantiated a reasonable amount of **\$75.00** for the cleaning of the carpet and a small area of the tiles.

I find that the Tenant's evidence of the Landlord being satisfied with the cleanliness of the unit on December 31, 2017 to hold a ring of truth. Given the photos and considering the Tenant's evidence of cleaning I find that there were only minor cleaning misses other than the oven. Although the Tenant submits that the garbage was left "in the area" designated for garbage, based on the undisputed evidence that bins were provided to the Tenant for the garbage and recycling, I find that the bins are the "designated areas". Given the photos I find that the Tenant did leave garbage and recycling outside the bins and that the Landlord is therefore entitled to its costs to dispose of the garbage and recycling. As the Landlord provided no invoice setting out the time for either cleaning or garbage disposal and considering there is no evidence of any out of pocket costs in relation to the garbage and recycling and that the Landlord is only entitled to a nominal sum of **\$100.00** for the minor cleaning misses, the Tenant's failure to leave the oven clean, and the Tenant's failure to remove the excess garbage and recycling at the end of the tenancy.

The Landlord's evidence of the state of the unit does not indicate that the unit was so unclean it could not be rented for any period of time. Given the Landlord's evidence that the unit was not advertised until the end of February 2017 and that the Landlord was seeking a significantly higher amount of rent I find that the Landlord failed to take any reasonable steps to mitigate the costs claimed that may have been caused by the Tenant's contradictory notices to end the tenancy. I therefore dismiss the claim for lost rental income. As the Landlord's application had very minimal success I decline to award recovery of the filing fee.

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. Given the undisputed evidence that the Tenant's forwarding address was provided to the Landlord in March 2017 and given that the Landlord did not make its application to claim against the security deposit until August 2017, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest in the amount of **\$770.00**. As the Tenant's application has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$870.00**. Deducting the Landlord's entitlement of **\$175.00** leaves **\$695.00** owed to the Tenant.

As only Tenant JT is named on the tenancy agreement as a tenant and as the Tenant named only Landlord RC in its application I make the monetary order in these names alone. As there is no application or claim from the Tenant in relation to the rent increase given in 2015 I make no findings in relation to that rent increase.

Conclusion

I Order the Landlord to retain **\$175.00** from the security deposit plus interest of \$385.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$695.00**. 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: September 08, 2017

Residential Tenancy Branch