



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent and damage to the rental unit pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damage to the unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary order?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on December 16, 2016 as a month to month tenancy with a rental amount of \$1480.00 payable on the 1st of the month. The tenant vacated the rental unit on March 31, 2017. The landlord continues to hold the \$740.00 security deposit paid by the tenant at the outset of the tenancy.

The landlord sought a monetary order against the tenant in the amount of \$4305.80. She testified that she noticed an excessive number of visitors to the tenant's rental unit within the first month of the tenancy. She testified that there were different people coming and going. She testified that her other tenants told her they believed that the tenant was renting out the unit as a short term vacation stay residence. As of March 7, 2017, after meeting one of the tenant's

visitors in the hall, the landlord confirmed her suspicion that the tenant was renting the unit as a short term vacation stay.

The landlord testified that, the day after she discovered the tenant was renting out his unit she contacted the tenant by telephone. The landlord testified that she advised the tenant that she would provide him with a notice to end tenancy or he could vacate the rental unit. Within 5 days, the tenant had notified the landlord that he intended to vacate the residence and had provided a notice to end tenancy with an end date of March 31, 2017. On that date, the rental unit was inspected by the landlord.

The tenant agreed that he was responsible for the state of the blinds and some additional cleaning costs. However, the tenant testified that while the move-out inspection was conducted in his presence, after the inspection was completed, the landlord raised damage that had been present at the outset of the tenancy, including the damage to the floors in the rental unit. He testified that the two parties argued about this issue. The tenant acknowledged that he became angry with the landlord when she attempted to claim pre-existing damage was the tenant's responsibility.

The tenant testified that the painting and hanging pictures on the wall were done with the landlords' verbal permission. He testified that it was only at the end of the tenancy that she claimed he required written permission. The tenant testified that the floor damage was raised during his original condition inspection.

The tenant testified that he returned the rental unit keys without any damage to them. He referred to the condition inspection report and noted that there was no comment with respect to the keys. The condition inspection report indicated that the keys were returned and noted as functioning.

The tenant argued that the landlord did not make efforts to re-rent the unit. He testified that the landlord has exaggerated her case to punish him for what she believes was unauthorized use of the tenant. He testified that he agreed with the landlord that he would vacate the unit because he didn't want to have to deal with her anymore and not because he was actually doing anything wrong.

The landlord's claim for \$4305.80 is calculated as follows,

| Item | Amount |
|--|-----------|
| Rental Loss | \$1480.00 |
| Painting the rental unit | 205.80 |
| Refinish the floors (ESTIMATE) | 800.00 |
| Cleaning the rental unit | 160.00 |
| Cleaning and replacing the blinds (ESTIMATE) | 280.00 |
| Rekeying locks and replacing keys | 1380.00 |

| | |
|--|------------------|
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order Sought by Landlord | \$4405.80 |

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven some of the damage and loss claimed as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects her testimony and indicates that the tenant took part in the condition inspection. Specifically, I find that the landlord is entitled to recover the cost of painting the rental unit at the end of the tenancy, cleaning the rental unit, cleaning the blinds and

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless proven.

Evidentiary weight of a condition inspection report

- 21** 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.

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount of the painting, rental unit cleaning and blind cleaning with invoices submitted as evidence for this hearing.

I find that the landlord proved, with an invoice and the condition inspection report as well as her undisputed testimony that the blinds required cleaning at the end of this tenancy. The landlord submitted an invoice dated November 28, 2016 to prove that the blinds were cleaned prior to the start of this tenancy. The tenant acknowledged that he was required to clean the blinds in accordance with the residential tenancy agreement and that he did not do so. Therefore, the landlord is entitled to \$94.50 – the cost of the invoice submitted for cleaning the blinds.

I find that the landlord proved, with an invoice and the condition inspection report as well as undisputed testimony that the unit had been painted prior to the tenant moving into the rental unit. An invoice dated December 15, 2016 proves that the landlord painted the unit prior to the outset of this tenancy. The landlord also submitted photographic evidence to show the condition of the unit at the end of the tenancy. The landlord also provided a painting invoice dated April 5, 2017 after the tenant vacated the rental unit. I accept that the landlord was required to paint 3 years prior to the usual useful life of painted walls in a residential tenancy unit. Therefore, I find that the landlord is entitled to be compensated in the amount of \$205.80, the amount of her invoice for the cost of painting the unit at the end of the tenancy.

I accept the landlord's testimony as well as her documentary and photographic evidence that she was required to do further cleaning after the tenant vacated the rental unit. I also note that the tenant acknowledged responsibility for the cost of additional cleaning of the rental unit. Therefore, I find that the landlord is entitled to recover \$178.50 –the amount of the invoice submitted for cleaning of the rental unit on move-out.

I find that the landlord did not prove that she was required to rekey the lock as a result of the tenancy. While I accept her testimony that she made a decision to rekey the lock because of the nature of the allegations made against the tenant with respect to renting the unit to vacationers, I note that the invoice dated July 6, 2017 submitted by the landlord is dated substantially after the end of the tenancy (March 31, 2017) and that the landlord indicated on the condition inspection report, prepared by the landlord indicates that the keys were returned and functioning at move-out. Therefore, I dismiss the landlord's application to recover the cost of rekeying. I find that the landlord has not provided sufficient evidence that the tenant is responsible for this cost, based on all of the evidence before me.

I have carefully reviewed the landlord's evidence with respect to the claim that it was necessary to refinish the floors at the end of this tenancy. I find that the landlord's photographic evidence was insufficient to prove that the floors were damaged during the course of this tenancy. The photographic evidence did not clearly demonstrate significant damage beyond wear and tear. Further, I note that the condition inspection report does not indicate damage to the floors of the unit; that the tenant disputes that he damaged the floor; and that the landlord has not provided an invoice to show that she has had the floors repaired. She provided one quote or estimate that refers to seemingly malicious damage. I am uncertain that the intent of the damage can be determined in this manner. I find that the landlord is not entitled to recover the cost of floor refinishing as I have insufficient evidence of any floor damage and that any damage was as a

result of actions by the tenant. Therefore, I dismiss the landlord's application to recover the cost of refinishing the floors.

In accordance with section 72, I find that the landlord is entitled to retain a portion of the tenants' security deposit towards the monetary amount below. As the landlord was successful in her application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

| Item | Amount |
|--|-----------------|
| Tenant's Security Deposit held by Landlord | \$740.00 |
| Painting the rental unit | -205.80 |
| Cleaning the rental unit | -178.50 |
| Cleaning the blinds | -94.50 |
| Recovery of Filing Fee for this Application | -100.00 |
| Security Deposit Amount to return to Tenant | \$161.20 |

Conclusion

I allow the landlord to retain \$578.80 of the tenant's \$740.00 security deposit.

I grant the tenant a monetary order in the amount of **\$161.20**.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 18, 2017

Residential Tenancy Branch