



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC 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, damage or other loss 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. The tenant confirmed receipt of the landlord's Application for Dispute Resolution ("ADR") including notice of hearing and evidence. The landlord confirmed receipt of the tenant's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or other loss?
Is the landlord entitled to retain all or a portion of the tenant's security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on December 15, 2013 with a rental amount of \$650.00 payable on the first of each month. A copy of the residential tenancy agreement was submitted as evidence for this hearing. On March 24, 2017, the tenant provided notice to the landlord of her intention to vacate the rental unit. The tenant gave notice that she would vacate the rental unit on April 30, 2017 however the landlord testified that the tenant ultimately vacated the rental unit on May 1, 2017. The landlord applied to retain the tenant's \$325.00 security deposit that the tenant paid at the outset of the tenancy towards a total monetary order against the tenant of \$2047.55.

The landlord testified that the tenant did not pay rent for April 2017 although the tenant resided in the rental unit for the entire month of April 2017. The tenant did not dispute

the testimony of the landlord with respect to April 2017 rent. The tenant testified that she vacated the rental unit on April 3, 2017 because she felt unsafe in the rental unit. She testified that the landlord, who also lived in the rental premises, was taking in boarders and that those boarders made the tenant feel uncomfortable. The tenant testified that she left a note for the landlord when she left the unit that allowed the landlord permission to retain her security deposit towards the unpaid rent.

The landlord also provided undisputed testimony that the tenant did not clean the rental unit at the end of the tenancy. The tenant wrote that she was unable to clean to the landlord's standards. Photographic evidence submitted by the landlord showed; dirty windows and window sills with dead bugs; dirty kitchen and bathroom floors; dirty toilet, shower and bath sink; dirty sink, refrigerator, oven/stovetop; dirty baseboards and heat registers; dirty entranceway floor and surrounding area; damaged blinds. The landlord submitted a quote or estimate from a cleaning company in the amount of \$220.00 but she did not submit a receipt of payment for cleaning services.

The tenant agreed that she left the rental unit without doing a full move-out cleaning. She also agreed that her cat had chewed the blinds in the rental unit leaving damage. The landlord submitted proof of the cost of the blinds at approximately \$38.00 per set. She testified that 2 sets required replacement. The landlord testified that the cat also ruined the carpet by scratching or chewing the carpet. The landlord submitted a quote or estimate for the cost of a carpet repair but no final invoice or paid bill. The tenant responded that the carpet was in poor condition when she moved in to the rental unit and denied causing any new damage.

The landlord testified that the tenant also left a lot of bottles and other recyclable items in the rental unit. She provided photographic evidence of several boxes of bottles inside the rental unit. The landlord testified that it took her over one hour to sort and bag the tenant's recycling left behind and that she should be compensated with \$25.00 for her time. The landlord testified that she put the recycling out with her regular recycling for curbside pick-up. The tenant confirmed that she left recycling behind but testified that she had already cleaned and sorted all of the recycling.

The landlord testified that pot light bulbs were missing from the rental unit at the end of the tenancy. She submitted receipts for the purchase of items from a home repair store. The receipt did not show the nature of the items purchased. The landlord testified that the cost was \$93.86 for pot light bulbs. The tenant disputed that she was responsible for this charge saying the bulbs had likely just worn out and needed to be replaced.

The landlord testified that the unit required painting at the end of the tenancy. She testified that there were a substantial amount of holes in the wall to be filled and sanded. She testified that she had to repaint the unit however she did not submit a receipt for painting. The tenant disputed that there were excessive holes in the wall, that she filled and sanded holes and that there was touch up paint in the unit available at no expense to the landlord.

The landlord created a condition inspection report at *the end* of this tenancy however she testified that the previous landlord did not provide her with a condition inspection report for the start of the tenancy. She testified that she also relies on the photographic evidence submitted and her own testimony as the basis for her application. The tenant testified that no move-in condition inspection was done and that the landlord would not speak to her when she vacated the residence therefore she had no opportunity to be a party to any inspection at the end of tenancy. She did not sign the condition inspection report and only became aware of the compensation sought by the landlord as a result of correspondence from the landlord and this application by the landlord.

The calculation of the amounts the landlord seeks from the tenant is as follows,

Item	Amount
April 2017 rental loss	\$688.25
Fix blinds	76.44
Clean	220.00
Patch holes, paint	769.00
Pot lights	93.86
Carpet repair	175.00
Landlord sorting recycling	25.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$1822.55

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. Her photographs of the rental unit provide some support for her position. I find that the photographs show that the landlord was required to have the unit cleaned and that she was required to remove the bottles and other recycling and refuse from the unit at her own expense.

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. I find that the candid nature of the tenant's testimony serves as further evidence that the tenant did not clean the unit at the end of the tenancy; that some recycling and refuse was left behind; that some blinds in the unit required replacement; and that the tenant did not pay the final month (April 2017) rent for the unit.

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.

- 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.

In this case, I find that condition inspection report has limited value in that there was no condition inspection at move-in and that the tenant did not attend the move-out inspection or have any opportunity to do so.

The landlord must also provide evidence that can *verify* the actual monetary amount of the loss/damage she has sustained. I find that the landlord has provided evidence with respect to a suggested cost for cleaning and for the blinds without any *verifiable* evidence in the form of receipts. The candid testimony of the tenant allows me to make an assessment regarding the tenant's responsibility and, based on the estimates provided by the landlord, I am able to assess the approximate costs to the landlord for repairs and clean-up.

In most circumstances, when assessing a claim for damage, Section 67 of the *Act* applies as outlined above. There may be circumstances where compensation is still appropriate without verifiable proof of an exact monetary amount of loss. The types of damages an arbitrator may award include; expenditures proved at the hearing in accordance with section 67 of the *Act* as outlined above; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and an amount reflecting a general loss where it is not possible to place an actual value on the loss.

I find that the landlord proved, with photographic evidence that the unit required cleaning at the end of the tenancy. I accept the landlord's estimate as determinative of the cost for this type of cleaning. I find that the landlord is entitled to a general loss amount of \$150.00 for any cost of cleaning the rental unit.

Given the tenant's candid testimony that her cat damaged the blinds and the landlord's photographic evidence, I find that the landlord is entitled to a general loss amount of \$50.00 for any replacement of the blinds. I note that the tenant does not dispute her responsibility for this damage.

I find that the landlord has proven that the reduced notice and the tenant's midmonth move-out prevented her from re-renting the unit immediately after the tenant vacated the premises. However, the landlord provided very little information with respect to her efforts to re-rent and the information was insufficient to prove that she mitigated her damages for the month of April 2017. Furthermore, the tenant provided undisputed testimony that the boarders had made her feel uncomfortable and potentially unsafe. I find there is some merit to the tenant's reasons for vacating early. Therefore I find that the landlord is entitled one half months' rent (\$325.00) towards some rental loss.

I find that the landlord is not entitled to recover the cost of pot light bulbs as she has provided insufficient evidence that the bulbs were damaged or overused by the tenant. I find that the light bulbs are not a cost that is the responsibility of the tenant.

With respect to the landlord's estimates submitted to show the cost of painting the rental unit at the end of the tenancy, I find that the landlord has provided insufficient evidence to show the costs. The cost of painting, as provided by the landlord is significant and a landlord must show that the condition at the start of tenancy was such that the painting required at the end of tenancy is premature. I cannot rely on the landlord's condition inspection report for this evidence. The photographs submitted by the landlord show that the tenant filled and covered the holes in the walls at the end of her tenancy. Further, the tenant testified that touch up paint matching the walls was left in the rental unit. Therefore, the landlord's cost, if any, should have been minimal. I accept the testimony of the tenant in that she has been candid with respect to the items of damage that she is responsible for and in acknowledging items left behind. Given the lack of sufficient proof submitted by the landlord and the tenant's dispute with respect to painting of the unit, I find that the landlord is not entitled to recover any cost of painting.

In this case, given the candid testimony of the tenant and the photographic evidence supplied by the landlord, I find that an amount reflecting a *general loss* is appropriate as

a monetary award to the landlord. In accordance with section 72, I find that the landlord is entitled to retain the tenant's 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.

I find that the landlord is entitled to a monetary amount, representing general loss in the areas listed below;

Item	Amount
April 2017 rental loss	\$325.00
Fix blinds	50.00
Clean	150.00
Landlord sorting recycling	25.00
Less Security Deposit	-325.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$325.00

Conclusion

I allow the landlord to retain the tenant's \$325.00 security deposit.

I grant the landlord a monetary order in the amount of \$325.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 19, 2017

Residential Tenancy Branch