



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application made May 5, 2017 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

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

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord states that the tenancy started on October 1, 2016. The Tenant states that the tenancy started on September 1, 2016. The Parties agree that the outset of the tenancy the Landlord collected \$500.00 as a security deposit, that rent of \$1,000.00 was payable on the first day of each month, that the Parties mutually conducted a mutual move-in inspection with a report copied to the Tenant, and that the Tenant did not attend a move-out inspection despite being given 2 opportunities by the Landlord for

such an inspection. The Parties agree that on January 3, 2017 the Tenant gave notice to end the tenancy and the Tenant moved out of the unit on January 12, 2017. The Landlord states and the Tenant does not dispute that the Landlord obtained the Tenant's forwarding address on January 14, 2017.

The Landlord states that the Tenant paid no rent for January or February 2017 and claims \$2,000.00. The Landlord states that on February 1, 2017 the unit was advertised online and that a tenant was obtained for February 28, 2017 at the same rental rate. The Tenant does not dispute the unpaid rent for January 2017. The Tenant disputes the claim for February 2017 rent and argues that the Landlord was given sufficient time to have advertised and filled the unit sooner.

The Landlord states that the tenancy agreement requires the Tenant to refill the propane tank at the end of the tenancy. The Landlord states that the Tenant was provided with a full tank and left the tank empty. The Landlord claims \$1,427.33 as the cost of refilling the propane tank and the Landlord provides the receipt for this claim. The Tenant does not dispute that the tank was filled at the outset and left unfilled at move-out but argues that the amount used seemed higher than expected. The Tenant states that her current residence uses an average of \$112.00 per month. The Landlord agrees that the propane consumption seems higher but states that the Tenant would leave the door of the unit open while smoking and that the amount is not excessive.

The Landlord states that the Tenant failed to clean under the fridge and stove that had wheels and failed to clean the light switches. The Landlord states that she paid a cleaner a flat rate of \$50.00 and pays her own residential cleaner \$25.00 per hour. The Landlord provides an invoice for this cost. The Tenant states that she is a small woman and could not move the fridge and stove as they were too heavy. The Tenant states that the average hourly cleaning rate is about \$15.00 to \$20.00 per hour and that the Tenant does housekeeping as a living. The Tenant states the cleaning under the

appliances would have taken 20 minutes and the cleaning of the switches about 30 seconds.

The Landlord withdraws the \$100.00 claim for damages.

The Landlord states that the unit had two dressers in it at the outset of the tenancy and that the Landlord allowed the Tenant to use these for the duration of the tenancy. The Landlord states that the one dresser, 80 years old and once belonging to the Landlord's mother, was not there at the end of the tenancy. The Landlord describes both dressers. The Landlord claims \$400.00 and states that she just came up with that figure. The Landlord states that she really just wants the dresser returned. The Tenant states that no dresser was removed at the end of the tenancy and provides a different description of the dressers that were left. The Tenant states that she moved her belongings out herself.

Analysis

Section 36 of the Act provides that the right of a tenant to the return of a security deposit is extinguished if the landlord has given two opportunities for inspection and the tenant has not participated on either occasion. Based on the undisputed evidence that the Tenant failed to attend any inspections although at least two were offered I find that the Tenant's right to claim against the security deposit was extinguished at move-out.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is no longer payable after a tenancy ends. Based on the undisputed evidence that the Tenant did not pay January 2017 rent I find that the Landlord has substantiated an entitlement to **\$1,000.00**.

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. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. While it can be accepted that the Tenant breached the Act by not providing a full month's notice to end the tenancy, in claiming damages from this breach the Landlord must still provide evidence of having acted to minimize the losses that would flow from the breach. This would require at a minimum an obligation by the Landlord to advertise the unit for rent as soon as the Landlord became aware of the Tenant moving out. As the Landlord did not advertise the unit until more than three weeks after receiving the Tenant's notice I find that the Landlord failed to take reasonable steps to minimize a claim for lost rental income and I dismiss this claim.

Given the provision in the tenancy agreement in relation to the propane, given the undisputed evidence that the propane tank was left empty, considering that the Tenant provided no supporting evidence to rebut the amount being claimed, and given the invoice indicating the cost to refill the tank, I find that the Landlord has substantiated the cost claimed of **\$1,437.33**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. The Residential Tenancy Branch policy guideline #1 provides that if the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it. Given the undisputed evidence that the appliances were too heavy for the Tenant to move and consider the Tenant's credible evidence that cleaning light switches would take only 30 seconds I find that the Landlord has not substantiated the cleaning costs and I dismiss this claim.

As the Landlord provided no evidence to support the existence of a valued piece of furniture, considering that it would not be reasonable to expect an item of value to be

left in a rental unit, and given the Tenant's plausible evidence that the dresser described by the Landlord was not in the unit I find that the Landlord has not substantiated that the Tenant is responsible for the loss of a dresser. I dismiss the claim for the dresser.

As the Landlord's application has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,537.33**. Deducting the security deposit plus zero interest of **\$500.00** leaves **\$2,037.33** owed by the Tenant.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$2,037.33**. 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: October 03, 2017

Residential Tenancy Branch