



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

The Landlord applied on May 11, 2017 for:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid rent or utilities - 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 Tenant applied on September 7, 2017 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on June 15, 2016 and ended by mutual agreement on April 30, 2017. Rent of \$2,800.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,400.00 as a security deposit. The Parties mutually conducted a move-in and move-out inspection with a condition report completed and copied to the Tenant. The move-out report does not note any damage

to the unit. The Tenant provided its forwarding address to the Landlord on May 1, 2017. The Tenant did not pay rent for April 2017.

The Landlord claims unpaid rent for April 2017 of \$2,800.00.

The Landlord states that the Tenant left a wall damaged by a hole and a bathroom countertop stained and with a water spot. The Landlord claims an estimated amount of \$204.75. The Landlord states that the work was completed at the end of May 2017, that the Landlord paid \$200.00 in cash for the work, and that the Landlord was not provided with an invoice or receipt for that payment. The Tenant states that the hole on the wall was either pre-existing or unnoticeable and that it was smaller than a little fingerprint. The Tenant states that the marks on the bathroom countertop could have been pre-existing but were not noticed by the Tenant.

The Tenant states that on July 4, 2017 she was awoken to a flood in the unit. The Tenant states that some pipe broke causing the flood. The Tenant states that she has no evidence that the Landlord either caused the pipe to break or was negligent in making providing proper plumbing. The Tenant states that she had remove her belongings to storage for a period of 4 months while the unit was repaired. The Tenant claims \$1,282.40 as the cost to remove her belongings to storage and provides the invoice. The Tenant claims \$578.81 as the cost of storage for the 4 months and provides the invoice. The Tenant claims \$782.25 for the cost to move her belongings back to the unit and provides the invoice. The Tenant states that it took her 8 hours every day for 5 days to clean, dry, and pack her belongings. The Tenant claims \$400.00 for her labour. The Tenant states that she stayed with her family members at no cost while waiting to move back into the unit. The Landlord states that the flood did not occur due to any act or negligence of the Landlord and that the Strata paid for the repairs to the unit out of their insurance. The Landlord states that the tenancy agreement required the Tenant to carry its own insurance.

The Tenant states that during the tenancy the Tenant was disturbed by noise from the persons living in the unit above the Tenant. The Tenant describes the noise coming from stomping, moving furniture and cleaning the floors. The Tenant states that she complained every week during the tenancy to the Landlord and that the Landlord did nothing. The Tenant states that a sewer smell was present in the unit from November 2016 until its final repair just prior to the end of the tenancy. The Tenant states that the Landlord was informed immediately and that a plumber was sent however this plumber was unable to repair the problem and a second plumber attended about 2 weeks later but that the repairs were not completed until March 2017. The Tenant claims a global amount of \$500.00 a loss of peaceful enjoyment of the unit.

The Landlord states that the Tenant only mentioned noise in November 2016 and that the Landlord informed the Tenant that they heard the same noise when they lived in the unit but did not consider it bothersome. The Landlord states that the Tenant then complained in January 2017 so the Landlord send a complaint to the Strata who then sent a warning letter to the upper unit. The Landlord states that when the Tenant complained again in February 2017 the Strata issued a fine on February 7, 2017 to the upper unit. The Landlord states that no complaints were received from the Tenant until March 2017 but the Landlord did nothing.

The Landlord states that the first plumber came on December 27, 2017 and the second plumber came on January 12, 2017. The Landlord states that the second plumber temporarily sealed the areas with wax to stop the fumes and then returned on March 8, 2017 to make the final repairs. The Landlord states that the final repairs for the sewer smell could not be done any sooner as parts had to be ordered in from another country.

Analysis

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. Based on the undisputed evidence of unpaid

rent I find that the Landlord has substantiated its claim to **\$2,800.00** for unpaid April 2017 rent.

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other 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 the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Given the lack of any notation of damage to the unit at move-out I find the Tenant's evidence of either no damage or pre-existing damage to be credible. Further, considering the lack of any supporting evidence that the costs claimed were incurred, I find that the Landlord has not substantiated its claims for damage to the unit and I dismiss the claim for \$204.75. 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 **\$2,900.00**.

As the Tenant provided no evidence that the Landlord either caused the flood by act or negligence I find that the Tenant has not substantiated evidence that the Landlord breached the Act or tenancy agreement. As a result I dismiss the Tenant's claim for losses caused by the flood.

Although the Landlord did not provide any supporting evidence of the actions taken by the Landlord to respond to the Tenant's complaints to March 2017 I accept the Landlord's believable description of the actions taken with the Strata and find that up to the last complaint the Landlord was not negligent in acting to provide the Tenant with quiet enjoyment of the unit. Based on the Landlord's evidence however of no response after the last complaint, I find that the Tenant has substantiated that the Landlord failed to act to remedy her loss of quiet enjoyment from March 2017 to the end of the tenancy.

Given the lack of supporting evidence such as a report from the second plumber that parts would take two months to bring in and could not be obtained elsewhere, I consider two months to be an excessive amount of time for obtaining parts. Further without

supporting evidence of the initial work carried out by the second plumber and considering that the Tenant's evidence of sewer smell to the final repair date holds a ring of truth, I find that the Tenant was exposed to sewer smells for several months. I consider this amount of time to be unreasonable and find therefore that the Tenant has substantiated that the Landlord failed to act within a reasonable time and that the Tenant is entitled to compensation for loss of enjoyment of the unit. As I consider the global amount claimed to be reasonable considering the level of rent being paid and the time the Tenant was exposed to sewer smell along with the loss of quiet enjoyment from the noise of upper tenants, I find that the Tenant has substantiated an entitlement to **\$500.00**. As the Tenant's application has had merit I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$600.00**. Deducting the Tenant's security deposit plus zero interest of **\$1,400.00** and the Tenant's entitlement of **\$600.00** from the Landlord's entitlement of **\$2,900.00** leaves **\$900.00** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$900.00**. 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: October 12, 2017

Residential Tenancy Branch