



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, 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 May 16, 2017 for:

1. A Monetary Order for compensation - Section 67; and
2. An Order for the return of the security deposit - Section 38.

The Landlord applied on May 26, 2017 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67I
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 and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters: Amendments

Both Parties made amendments. The Tenant amended its application to add a claim for breach of quiet enjoyment. The Tenant confirms that the original application, in addition to return of the security deposit, seeks compensation in relation to a notice to end tenancy given to the Tenant by the Landlord. The Landlord amended its application on October 12, 2017 to claim compensation in relation to another area of damage.

Rule 4.6 of the RTB Rules of Procedure provides that a copy of an amended application must be received by the other party no later than 14 days before the hearing. Rule 2.3 of the RTB Rules of Procedure provides that all claims in an application must be related. As the Landlord only made its amendment 7 days before the hearing I find that the amendment was not made within the allowed time. I therefore dismiss the amended claim with leave to reapply. As the Tenant's claim in the amendment is not related to the security deposit or the Landlord's use of the unit I dismiss the Tenant's amended claim with leave to reapply.

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 following are undisputed facts: The tenancy of an upper unit in a house started on June 1, 2013. Rent of \$1,350.00 was originally payable on the first day of each month. Effective February 1, 2017 the rent was increased to \$1,441.43. At the outset of the tenancy the Landlord collected \$680.00 as security deposit. No move-in inspection or report was completed. The Tenant moved out of the unit on February 28, 2017 and returned the keys to the Landlord on March 29, 2017. The Tenant provided its forwarding address to the Landlord on March 30, 2017. The tenancy ended as a result of the Landlord's issuance of a 2 month notice to end tenancy for landlord's use (the "Notice"). The Notice had a stated effective date of March 30, 2017. The reason stated on the Notice was that the Landlord or a close family member would be moving into the unit. No rent was paid for February 2017.

The Tenant states that they moved out of the unit early in order to obtain available housing. The Tenant states that the Landlord agreed that they could leave the final cleaning and return of keys until the end of March 29, 2017. The Tenant states that the

Landlord never mentioned anything about paying the rent for March 2017, that the unit was not used by the Tenants for that month and no rent was paid for that month.

The Landlord states that mid-March 2017 the Landlord discovered that the Tenant had changed the locks to the unit. The Landlord states that the Tenant sent an email informing that they had moved out and that the keys were left in the unit. The Landlord states that March 2017 rent was not requested due to the Notice and that the Landlord wanted rent paid for February 2017. The Landlord claims unpaid rent of \$1,441.43.

The Tenant states that the Landlord was living in a basement suite in the house at the end of March 2017. The Tenant submits that the Landlord split his time between living with his wife and the suite. The Tenant states that the Tenant was informed that the Landlord, his wife and his son were to move into the upper unit. The Tenant states that the Landlord never did move into the unit. The Tenant submits that the Landlord never intended to move into the unit and that the Landlord served the Tenant with the Notice out of anger due to the Tenant having made complaints to city authorities. The Tenant states that an email dated April 17, 2017 between the Landlord and the city, obtained through an access to information request, shows that the Landlord intended to demolish the house and re-develop the property. The Tenant argues that this and the additional emails between the Landlord and the city, provided as evidence, supports that the Landlord did not intend to move into the unit. The Tenant states that after the end of the tenancy she and her boyfriend frequently drove by the house and saw that the tenant who had also been living in the other basement suite had moved into the upper unit. The Tenant states that this tenant's car was parked in the parking spot for the upper unit. The Tenant provides a photo of the car. The Tenant claims \$2882.86.

The Witness states that he drove by the house at least once a week and that the other tenant was seen through the window to be inside the upper unit and was once seen leaving the upper unit. The Witness states that the Landlord's car was never parked in

the upper unit's spot. The Witness states that the Landlord was not living in the basement suite either.

The Landlord states that he did move into the upper unit and that the tenant who had been living in the other basement suite was offered a bedroom in the upper unit. The Landlord states that the city had informed the Landlord that renovations had to be made to the other tenant's basement suite as the ceilings were too low. The Landlord states that he felt badly for this tenant and therefore offered to share the upper unit with him. The Landlord states that his wife never moved into the unit and lives somewhere else. The Landlord states that they separated in December 2016. The Landlord states that he still lives in the upper unit.

The Landlord states that without permission the Tenant changed the original shower head and that when the shower is used the water pipe shifts. The Landlord states that the Tenant's shower head was left attached at the end of the tenancy. The Landlord states that he obtained a quote for the repairs that needed to be done as a result of the Tenant's damage to the pipe. The Landlord claims \$1,879.50.

The Landlord states that during the tenancy the Tenant was given permission to have a pet dog. The Landlord states that between January 1, 2016 and March 31, 2017 the dog was allowed to pee on the lawn and that it caused damage to the lawn. The Landlord claims an estimated \$500.00 to replace the lawn. The Landlord states that this had not been done as of yet and that no other actions were taken by the Landlord such as adding fertilizer or new seed.

The Landlord states that the living room and kitchen drapes, that were new in 2013, were missing at the end of the tenancy. The Landlord states that original costs for the drapes were not very much and less than \$100.00 each. The Landlord claims \$350.00 for the estimated costs of the drapes and installation. The Landlord states that the kitchen drapes have not been replaced and that the living room drapes were replaced

by the other tenant's own drapes. The Tenant states that at the outset of the tenancy the living room only had broken blinds and that these were removed by the Tenant who used her own blinds. The Tenant states that the original broken blinds were left at the unit. The Tenant states that the kitchen was provided with old raggedy drapes that were at least 5 years old at the end of the tenancy.

The Landlord states that a bedroom carpet was left unclean. The Landlord states that he rented a carpet cleaner and cleaned the carpet himself but that they did not come clean as they were so stained. The Landlord states that the carpet has not been replaced and that the quote provided for its replacement was obtained through an internet search. The Landlord states that no receipts for the costs of the carpet cleaning machine were provided and no invoice for the claim was provided. The Landlord claims \$200.00 for the cost of cleaning the carpet and \$640.00 for the cost of replacing the carpet.

The Landlord states that the Tenant left an unclean fireplace, a front door wall scratched, grease on the oven and damaged weather stripping and hallway trim. The Landlord claims \$260.00 for his time to clean and make repairs to the unit. The Landlord provided no invoice. The Landlord states that the Tenant did not attend a move-out inspection and that the Landlord conducted the inspection himself. The Landlord provided faxed copies of photos apparently of the unit. It is noted that copies are mostly black.

The Landlord states that the smoke detector was missing at move-out and that electrical work had to be done due to the missing smoke detector. The Landlord claims an estimated amount of \$350.00 for the repairs. No invoice or outside estimate was provided.

The Tenant denies leaving damages to the unit and states that the unit was fully cleaned at the end of the tenancy. The Tenant provides photos of the unit. The Tenant

states that the fireplace was never used as it was not operable and the flu had never been cleaned. The Tenant states that she has no idea about the damages described by the Landlord.

Analysis

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. Based on the undisputed evidence of the date of receipt of the forwarding address and given that the Landlord did not make an application to claim against the security deposit within 15 days of receipt of that address I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$1,360.00**.

Section 51(2) of the Act provides that if steps have not been taken to accomplish the stated purpose for ending the tenancy for landlord's use within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. An email dated April 17, 2017 indicates that the Landlord plans to demolish the house and is waiting for the permit. Additional emails dated in February 2017 indicate that the unit will be occupied by the Landlord or "1 family occupying the entire house". I consider that these emails support that the Landlord did not have a good faith intention to occupy the unit, and while this is not evidence that the unit was not occupied by the Landlord, I consider this evidence to detract from the overall credibility of the Landlord. Given the Tenant's Witness evidence and considering that the Landlord did not provide any witness evidence from the tenant living in the upper unit, I find on a balance of probabilities that the Tenant has substantiated that the Landlord did not move into the unit. As a result I find that the

Tenant is entitled to the equivalent of double the monthly rent payable in the amount of **\$2,882.86** (\$1,441.43 x 2).

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. 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.

The Landlord has claimed a large amount of money for the repairs to the shower and pipes. There is nothing, such as a plumber's assessment or report, to support the Landlord's oral evidence that the change of the shower head caused a pipe to shift. Further the Landlord provided no evidence that any costs were incurred due to such a shift, that the pipe was repaired or that the shower was not useable due to the shower head or the shift of the pipe. As a result I find that the Landlord has failed to substantiate that the Tenant caused the damage to the shower and pipes and I dismiss this claim.

The Landlord has made several additional claims of damage to the unit without any evidence of costs incurred or losses sustained. The Landlord provided no evidence of any attempts to mitigate any of the losses claimed. The Landlord provided no supporting quotes or estimates from reliable sources for the costs claimed in relation to the lawn, carpet and smoke detector. There is no move-in condition report documenting the state of the drapes or blinds at move-in. The Landlord provided no clear photos depicting any damages. I consider that the Tenant's photos show a clean and undamaged unit at move-out. For these reasons and considering the oral evidence of the Tenant I find on a balance of probabilities that the Landlord has not substantiated

the Tenant caused the damages claimed or that the Landlord incurred the costs claimed in relation to the lawn, drapes, carpet, general cleaning and additional repairs. I therefore dismiss these claims.

Based on the undisputed evidence that the Tenant did not return the keys to the unit until the end of March 2017 I find that the Tenant retained possession of the unit until the end of March 2017. Based on the undisputed evidence that the Tenant did not pay rent for either February or March 2017 I find that the Landlord has substantiated an entitlement to unpaid rent of **\$1,441.43**. As the Landlord's application has been somewhat successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,541.43**.

Deducting the Landlord's entitlement of **\$1,541.43** from the Tenant's total entitlement of **\$4,242.86** (\$1,360.00 + 2,882.86) leaves **\$2,701.43** owed to the Tenant. I grant the monetary order to the Tenant as the Party named in the Tenant's application.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,701.43**. 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 20, 2017

Residential Tenancy Branch