



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rent-A-Husband Ent. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application made June 9, 2017 and amended application made November 6, 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 compensation - 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 Landlords and Tenants were each given full opportunity under oath 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 tenancy started in either 2014 as recalled by the Landlord or on February 1, 2015 as stated by the Tenant.

The following are undisputed facts: A signed tenancy agreement was entered into for a start date of February 1, 2015 on a fixed term to end January 31, 2016. Rent of \$1,000.00 was payable on the first day of each month. On January 1, 2015 the Landlord collected a security

deposit of \$500.00 and a pet deposit of \$500.00. On February 1, 2016 another tenancy agreement was entered into for a month to month tenancy. The rent stayed at the same amount and the deposits were carried over to this tenancy. Although the Parties conducted a walk through when the Tenant's first moved into the unit, the Landlord did not complete an inspection report. The Parties mutually conducted a walkthrough at move out. The Tenants provided their forwarding address at move-out on June 8, 2017.

The Landlord states that a move-out condition report was completed and she believes that a copy was provided to the Tenant. The Landlord confirms that no copy of this move out report was provided as evidence for this hearing. The Tenant states that no report was filled out by the Landlord during the walkthrough at move out and that the Landlord only took photos.

The Parties agree that the Tenants installed a window based air conditioning unit without the permission of the Landlord. The Landlord states that although the Landlord attended the unit on occasion to make repairs, the Landlord made no inspections of the property during the tenancy and did not see the unit until the end of the tenancy. The Landlord submits that the unit left water damage on the frame and siding and that the Tenants failed to remove the outer shelf that held the unit. The Landlord states that the Tenants left kitchen tiles damaged and a main screen door with a tear at the corner of the screen. The Landlord claims \$7,590.00 for the estimated cost of repairs. I note that the estimate is dated November 5, 2017 and included in the evidence package that was provided to the RTB on November 6, 2017. The Landlord confirms that those repairs have not been completed.

The Tenant states that the only damage left from the air conditioning unit was from the shelving that was not removed at the end of the tenancy. The Tenant states that the screen door described by the Landlord did not work at all from the onset of the tenancy and that the window on the screen door would not open. The Tenant states that they did not notice this damage at all and that perhaps it occurred from the other door opening and closing on it. The Tenant states that at the outset of the tenancy one of the kitchen tiles was completely cracked. The Tenant states that during the tenancy the surrounding tiles also cracked, for a total of 4 cracked tiles. The Tenant states that perhaps there was a structural flaw as nothing was done to increase the number of cracked tiles and that the damage would be from normal wear and tear.

The Landlord states that the Tenant left damages to the walls, including the two bedroom walls and that as a result the entire unit required painting. The Landlord claims an estimated \$6,100.00 for the costs to repaint the entire unit. The Landlord provides this estimate dated July 15, 2017. The Landlord states that the unit was last painted in 2015 by themselves. The Landlord provides photos of the bedroom walls and the walls beside a carpeted stairwell that have numerous patches that extend to the top of the walls. The Landlord states that the Tenants left dents, and chips and scratches, likely from toys, along with screw holes from a baby gate. The Landlord states that the patching of the walls was started by the company it received the estimate from but not completed due to a lack of funds. The Landlord states that the photos were taken sometime in June 2017, unlike the remaining photos that were taken on June 8, 2017. The Tenant states that the paint was not new at move-in as there were existing scuff marks on the walls. The Tenant states that they did not hang any pictures at all during the tenancy.

The Landlord states that the Tenant failed to leave the stairwell carpet clean. The Landlord claims \$200.00 for the costs of carpet cleaning and provides an estimate dated November 3, 2017 for this cost. The Landlord states that the stairwell carpet was covered during the patching period. The Landlord states that they did not clean the carpet yet as they were told by a carpet cleaner that they should wait until the repairs to the walls were done before the cleaning. The Landlord claims an estimated cost of \$200.00 and it is noted that the estimate was provided to the Landlord on November 3, 2017. The Tenant states that the stairs were steam cleaned three weeks prior to their move-out with a borrowed steam cleaner. The Tenant states that she still has left over cleaning solution.

The Landlord states that the Tenant failed to leave the unit, yard and garage clean. The Landlord claims \$500.00 and includes this cost on an invoice provided by the Landlord. Although the Landlord provides an invoice there are no details for this claimed cost such as areas cleaned, amount of labour and hourly costs. The Landlord states that this detail is not included as they hired a 3rd party to help complete the work and that they paid cash for the work. The Landlord states that an invoice was not provided from this person because of the cash payment.

The Landlord states that the Tenants were given a very old lawnmower to use during the tenancy. The Landlord states that the provision of the lawnmower was not part of the tenancy agreement. The Landlord states that sometime in 2015 they gave the Tenants \$100.00 towards the purchase of a new lawnmower and that at the end of the tenancy the Tenants took the lawnmower with them. The Landlord states that they still have the old lawnmower and have not purchased a new one. The Landlord claims \$100.00. The Tenant states that the Landlord told her that the old lawnmower had been left for the previous tenants. The Tenant states that the lawnmower was unsafe to use. The Tenant states that at their own cost they re-seeded the lawn at the beginning of the tenancy and that the Landlord gave the Tenants \$100.00 towards that cost. The Tenant states that the Landlord did not provide the money for a new lawnmower. The Tenant states that they purchased another lawnmower at their own cost.

The Landlord states that given the extent of the damages and because the Landlord could not obtain any contractors to make repairs since the end of the tenancy the Landlord was unable to rent the unit since the tenancy ended. The Landlord claims \$5,000.00 for 5 months of lost rental income. The Landlord states that they did not have the funds to complete the repairs. The Landlord states that they applied for a line of credit and in the meantime started the cleaning of the unit. The Landlord states that they did not receive that credit until September 2017. The Landlord also states that they started cleaning the unit after receiving the line of credit. The Landlord states that the unit has been in no shape to either rent or sell. The Landlord states that they did not try to either rent or sell the unit. The Landlord states that they contacted many contractors but all of them told them that they were not available for summer jobs. The Landlord provides no supporting evidence of this unavailability. The Landlord claims lost rental income for 5 months in the amount of \$5,000.00.

Analysis

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.

Given the description of the damages and the photos I cannot conclude that the unit was so damaged that it could not be rented. I note that the Landlord did not attempt to rent the unit and consider therefore their evidence that nobody would rent the unit has no credible basis. Further the Landlord's evidence that the painting or other repairs could not be finished as they had no funds does not hold a ring of truth given the Landlord is a company that apparently does household repairs, as indicated by their invoice and given the Landlord's evidence that they themselves painted the unit in 2015. Given their evidence of cleaning in September 2017, without concluding that the Landlord is giving contradictory evidence, I can only surmise that the Landlord did not seek a line of credit until September 2017. Given the evidence of not trying to rent the unit, not completing even the painting of the unit and not seeking a line of credit until September 2017, it appears that the Landlord "sat on their hands" and did nothing to mitigate rental losses from their rental business. The Landlords are in the rental business and the Tenants cannot be held liable for poor business choices. I therefore find that the Landlord failed to take reasonable steps to mitigate rental income losses and I that the Landlord is therefore not entitled to the rental income losses claimed. I dismiss this claim.

As the Landlord did not incur any costs for the repairs to remove the air conditioning unit, repair the screen on the door and replace or repair the 4 kitchen tiles, I find that the Landlord has failed to substantiate the costs claimed. Further given the undisputed evidence of a broken tile at the outset with the remaining tiles around that tile being cracked, I find that this damage was caused only by wear and tear. I also accept the Tenant's plausible evidence of the screen door being non-functioning at move-in. Without any move-in condition report I find that the Landlord has not substantiated that the Tenants caused the damage to the tiles or the door. I also consider that there is likely no value to the door itself, regardless of the screen. I find therefore

that the Landlord has not substantiated the total costs claimed. Given the undisputed evidence that the Tenants installed the shelf for the unit without permission and did not remove that shelf at the end of the tenancy and make any repairs that would have been caused by the installation of the shelf and air condition I find that the Landlords are entitled to a nominal amount of **\$100.00**.

While it may be accepted that the Tenants left some marks on the walls of the unit, given the lack of a move-in condition report, the lack of supporting evidence of the date of the previous paint job and considering the Tenant's evidence of pre-existing scuff marks I do not accept that the walls held new paint at the outset of the tenancy. I also find it odd that the patches go up to the ceiling on walls that held no pictures as the undisputed evidence of the Tenants indicate. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damages claimed. As a result I dismiss the claim for painting the unit.

Given the Tenant's evidence of carpet cleaning that I consider holds a ring of truth, I find that the carpets were left clean by the Tenants and I dismiss this claim for their cleaning. Given the evidence of the Landlord that they paid a 3rd party to do cleaning to the unit, I find that their invoice for this work in a global amount without an invoice from that 3rd party to hold little credible weight. I also consider that none of the photos show any unclean appliances, bathrooms, or floors and there is no move-out condition report to support any unclean areas. The photos of the unit show merely minor cleaning and nothing to the extent of costing \$500.00. For these reasons I dismiss the cleaning claim. Given the Tenant's undisputed evidence of the provision of \$100.00 toward the Tenant's costs of seeding the lawn, which I note is not a tenant's responsibility at move-in, and given that the Landlord removed the old lawnmower I find that the Landlord has not substantiated that the Tenant caused a loss by failing to leave their own lawn mower at the end of the tenancy.

As the Landlord's claims have met with minimal success I decline to award recovery of the filing fee.

Policy Guideline # 17 Security Deposit and Set Off provides that the security deposit or any balance remaining on the deposit will be ordered returned on a landlord's application to retain

all or part of the security deposit. Deducting the Landlord's entitlement of **\$100.00** from the Tenant's security and pet deposit plus zero interest of **\$1,000.00** leaves **\$900.00** to be returned to the Tenant.

Conclusion

I Order the Landlord to retain \$100.00 from the security deposit plus interest of \$1,000.00 in full satisfaction of the claim.

I grant the Tenant 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: November 24, 2017

Residential Tenancy Branch