



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, 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 Landlord applied on May 30, 2017 for:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for unpaid rent - 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 October 4, 2017 for:

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

The Tenant and Landlord 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?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on April 1, 2016 for a fixed term to end March 31, 2017. The Tenants moved out of the unit on January 18, 2017. Rent of \$2,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit. The Parties mutually conducted a move-in inspection with a condition report completed and copied to the Tenant. Although the Parties conducted a move-out inspection the Landlord did not complete a condition inspection report.

The Landlord states that he received the Tenant's forwarding address on May 24, 2017 by express post and the Landlord provided the tracking number for this delivery as noted on the mail package. The Tenant states that he provided his forwarding address by registered mail on May 17, 2017. The Tenant was unable to provide the tracking number for this registered mail. The Tenant claims return of double the security deposit of \$2,500.00.

The Tenant states that the tenancy was for a furnished unit but that the Landlord failed to provide furnishings so the Tenant had to purchase furniture for use at the unit. The Tenant states that at move-in the Tenant did not ask the Landlord to provide furnishings as agreed and that the Tenant did not inform the Landlord that the Tenant was expecting to be compensated for the unit not being furnished. The Tenant claims \$8,553.32. The Tenant calculates this amount as 10 months' worth of the cost of the new furniture. The Tenant states that had the unit not been furnished an appropriate rental level would have been \$1,800.00. It is noted that the tenancy agreement indicates that furniture is provided. There is no addendum setting out the furnishings provided.

The Landlord states that the unit was not provided furnished but that the Tenant informed the Landlord that if the unit were furnished the Tenant's employer would

accept the rent level. The Landlord states that he agreed to check off the furnished box for the Tenant.

The Tenant states that the garage was not completed at the time the tenancy started so the Tenant completed the work on the concrete floors and painted the stairs. The Tenant states that the Landlord agreed that the Tenant could do the work. The Tenant states that the Tenant did not ask for compensation and there was no agreement by the Landlord for compensation for this work. The Tenant claims \$1,250.00. The Landlord states that while the Landlord agreed that the Tenant could make these repairs there was no agreement for the Tenant to be compensated.

The Tenant states that it paid for a fully completed unit but did not receive one. The Tenant states that the basement was not finished and there was no fencing around the patio. The Tenant states that the basement floors and walls were finished as was the bathroom but that the ceiling was missing and wiring was exposed. The Tenant states that the basement was left unfinished for four months. The Tenant states that the basement area was not used by the Tenants for any reasons. The Tenant claims \$2,500.00 and bases this amount on the equivalent of one month's rent. The Landlord states that the only thing to complete at move-in was the basement ceiling and that the Tenant told the Landlord to take his time as long as the work was finished by August when the Tenant's wife was to arrive. The Parties confirm that the ceiling was complete in August 2016. The Landlord states that there was no hanging wires and that only the breaker panel was exposed at the time. The Landlord states that the Tenant kept changing his mind about the railing on the patio and had told the Landlord that it did not want any wall railing as it wanted a fence instead. The Landlord states that the Tenant then told the Landlord it wanted a wall separating the patio from the other side of the duplex. The Landlord states that the Tenant then wanted a fence down the middle of the yard again to separate the other side of the duplex yard. The Landlord states that there was never any agreement for a fence and that the Tenant only requested this in August 2017. The Landlord states that on the wishes of the Tenant's wife a dividing

wall was installed on the deck in August 2017. The Landlord states that the separating fence was not completed before the tenancy ended. The Landlord argues that the Tenant is seeking an excessive amount.

The Landlord states that on November 8, 2016 the Tenant gave notice to end the tenancy for December 31, 2016. The Landlord states that the Tenant then agreed to remain and pay rent for January 2017 if the Landlord was not able to rent the unit for January 1, 2017. The Landlord states that the unit was advertised online and through the distribution of a paper advertisement from November 8, 2016 onward. The Landlord provides a copy of the paper advertisement. The Landlord states that it did not set out the rent being sought as the Landlord was willing to negotiate. The Landlord states that the advertisement continued throughout January 2017 and that only one person viewed the unit but made no offer to rent. The Landlord states that if persons called and inquired the landlord would tell them that the rent was \$2,000.00 with negotiation on the inclusion of utilities. The Landlord states that the unit did not rent prior to the end of the fixed term and was not filled again until July 2017 at a rental rate of \$2,050.00 including utilities. The Landlord claims \$5,000.00 as lost rental income for February and March 2017.

The Tenant states that the Landlord verbally agreed that the Tenant could end the tenancy early. The Landlord states that there was no verbal agreement to accept an early end. The Landlord states that the Tenant was offered a written mutual agreement to end the tenancy with conditions, which the Tenant refused. The Tenant states that he did not sign the mutual agreement because he did not understand and had misunderstood the tenancy agreement.

The Landlord states that the Tenant left walls in the unit covered with stuck on murals. The Landlord states that the Tenant also left screw holes on the walls from installing curtain rods that the Tenant did not have permission to install. The Landlord states that the Tenants were only given permission to hang pictures on the walls. The Landlord

states that large holes were also left in the basement where the Tenant had hung a heater or something similar. The Landlord states that he obtained a quote provided for this work, provided as evidence, and considering he could do the work for less. The Landlord states that he patched the walls and touched them up with paint. The Landlord claims \$445.00 for the repairs and states that he spent several more hours completing the work than expected. The Landlord provides photos. The Tenant does not dispute that the walls were left with the murals and holes and states that the Landlord refused the Tenant's offer to make those repairs in November 2016. The Landlord states that the Tenant never offered to fix the walls and that the Tenant still had furniture in the unit to the middle of January 2017.

Analysis

Section 90 of the Act provides that a document served by mail is deemed to be received on the 5th day after it is mailed. Based on the Tenant's evidence that its forwarding address was provided to the Landlord on May 17, 2017 by registered mail I find that the Landlord is deemed to have received the address on May 22, 2017.

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. Given that the Landlord has been found to have received the forwarding address on May 22, 2017 and as the Landlord made its application on May 30, 2017 I find that the Landlord made its application to claim against the security deposit within 15 days of the receipt of the forwarding address. As a result I find that the Tenant is not entitled to receipt of double the security deposit and I dismiss this claim.

Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other

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 the Landlord's evidence of agreeing to indicate that the unit was furnished when it was not furnished puts the Landlord in a bad light, I consider that this evidence does hold a ring of truth. I also consider that the Tenant did nothing to hold the Landlord to any agreement to provide furniture at the onset of the tenancy. Taken together with a lack of any identification of the furnishings either within the tenancy agreement itself or as an addendum, I accept that there was no agreement to provide a fully furnished unit. I find on a balance of probabilities therefore that the Tenant has not substantiated that the Landlord breached the agreement or the Act and I dismiss the claim for the cost of furnishing the unit.

Based on the Tenant's evidence that there was no agreement between the Parties for the Tenant to be compensated for the work on the garage, I find that the Tenant has not substantiated that the Landlord breached any agreement in relation to these repairs and I dismiss this claim.

As the Tenant provided no supporting evidence for the existence of any exposed wiring or other risk of danger that the unfinished ceiling or lack of railing posed and considering the Landlord's plausible evidence that there was nothing exposed other than the breaker panel in the basement, I find on a balance of probabilities that the Tenant did not lose use of the basement or patio due to any dangers. However given that the Landlord obtained full rental value when the unit was not fully finished, despite the evidence that the Landlord could take its time to complete the work or that the Tenants were undecided about the railing, I find that the Tenant has substantiated a loss in the value of the tenancy. As the evidence supports that the remaining part of the basement was complete and useable and as there is no evidence that the Tenants lost use of the patio or yard, I find that the Tenant merely lost cosmetic value in a nominal amount of

\$100.00 per month for a total entitlement of **\$400.00**. I note that the Tenant did not claim recovery of the filing fee.

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that, inter alia, is not earlier than the date specified in the tenancy agreement as the end of the tenancy. There is no evidence of a written mutual agreement for the tenancy to end earlier and I consider that evidence of an oral agreement may not amend a written agreement. As the Tenant could not end the tenancy prior to March 31, 2017, I find that the Landlord has substantiated that the Tenant breached the tenancy agreement and the Act and is therefore liable for losses. Given the Landlord's evidence of advertising the unit from November 2016 and considering the Landlord's undisputed evidence of seeking a lesser amount of rent for the unit than was paid by the Tenant I find that the Landlord did take reasonable steps to mitigate its losses. As such I find that the Landlord has substantiated the claim for lost rental income of **\$5,000.00**.

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. Given the lack of supporting evidence that the Landlord did not allow the Tenant to make repairs to the walls and as I consider the Landlord's evidence that no such refusal occurred as holding a ring of truth, I find that the Landlord did not stop the Tenant from repairing the unit at the end of the tenancy. Based on the undisputed evidence of murals left on walls and holes left, without permission to install drapes and a heater, I find on a balance of probabilities that the Tenant left the unit damaged beyond reasonable wear and tear. Given the Landlord's evidence of quoted costs of \$525.00 I find that the Landlord mitigated its loss by completing the work himself and that the Landlord is entitled to its claim of **\$445.00**. As the Landlord's claims have been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,545.00**. Deducting the security deposit plus zero interest of

\$1,250.00 plus the Tenant's entitlement of **\$400.00** from this amount leaves **\$3,895.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,250.00 in partial satisfaction of the claim and I grant the Landlord a monetary order under Section 67 of the Act for **\$3,895.00**. 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 17, 2017

Residential Tenancy Branch